THE INDIAN
LAW REPORTS
M.P. SERIES

5 years' Digest

2016
to
2020

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THE INDIAN LAW REPORTS
M.P. SERIES

CONTAINING-CASES DECIDED BY THE SUPREME COURT OF INDIA AND THE HIGH COURT OF MADHYA PRADESH

5 years' Digest

From 2016 to 2020

The Indian Law Reports
(M.P. Series)

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From 2016 to 2020

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Shri Ritesh Kumar Ghosh, Advocate,
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~ Assisted by ~

Smt. Deepa Upadhyay, Assistant Editor
Shri Swadesh Kumar Jain, Sr. Judicial Assistant
Smt. Jyoti Ganguli, Sr. Judicial Assistant

For Indian Law Reports (MP) Committee, Jabalpur, under the Authority of the Governor of M.P., Madhya Pradesh Shasan, Bhopal.

Justice Ravi Malimath
Chief Justice
High Court of Madhya Pradesh

सत्यमेव जयते

18th August, 2023

MESSAGE

I'am pleased to learn of the publication of the five years' digest i.e. "2016 to 2020" of the Indian Law Reports M.P. Series.

It is essential for the legal fraternity to stay abreast of the various judgments delivered and orders pronounced. To this effect, the publication of a five years' digest is a welcome move to significantly aid in the process of remaining conversant with the cases.

The digest covers headnotes of reportable judgments/orders passed by the High Court of Madhya Pradesh and the Supreme Court of India (arising from the High Court of M.P.), published in the Indian Law Reports M.P. Series for the period January, 2016 to December, 2020. The digest also provides synopses in areas where further elaboration is required. The succinct and structured nature of the digest would certainly make it a ready reckoner for cases of that time period. I'am confident that this digest will prove to be of immense importance to the judges, the advocates and the entire legal fraternity.

I'am also glad to know that this digest would be made available in the digitalized form as well. The print version coupled with the digital version will ensure a wider dissemination of the digest amongst all stake holders.

I congratulate all those associated with the Indian Law Reports M.P. Series, for the publication of this digest and wish them the very best for their future endeavours.

(Justice Ravi Malimath)

Justice G.S. Ahluwalia
JUDGE
HIGH COURT OF MADHYA PRADESH

सत्यमेव जयते

Foreword

I am delighted to pen down this foreword not only as Chairman of the Indian Law Reports (M.P.) Committee but also because I had been associated with the Indian Law Reports M.P. Series as Chief Editor.

I am happy that the Indian Law Reports M.P. Series is publishing 5 Years' Digest (2016 to 2020). It might be useful and appropriate to set forth some ideas in short, on how a Digest can best serve members of the different branches of the legal profession-specifically Judges, practicing Lawyers, Law students, and academic Lawyers-plus persons outside the legal profession who are interested in Law.

A digest is a compilation of subject-wise alphabetical arrangement of Headnotes. Digests allow you to locate case law on particular areas of law, browse the sub-topics included in a particular subject area, locate cases when all you have is a case name, by using the Nominal Index, locate cases that have defined a particular word or phrase, by using the Words and Phrases section. Synopses have been provided on all important topics throughout the Digest.

Digests are valuable works and give Judges and Lawyers quick access to essential legal authorities. I am sure that all legal fraternity would agree that they should continue to be updated. It is much more convenient and time saving to find a particular law laid down on a particular subject, through a Digest which contains subject index, headings and synopses instead of going through the entire Judgments.

I am hopeful that this Digest will attract a significant readership of Judges, practicing Lawyers, Law students and all those interested in the field of Law.

I am sure, the Indian Law Reports M.P. Series will achieve even higher standards under the excellent leadership and patronage of Hon'ble Mr. Justice Ravi Malimath, Chief Justice of the High Court of Madhya Pradesh.

I wish great success to the Indian Law Reports M.P. Series.

(GURPAL SINGH AHLUWALIA)
CHAIRMAN, INDIAN LAW REPORTS
(M.P.) COMMITTEE

THE HIGH COURT OF MADHYA PRADESH, JABALPUR
AS ON 31.07.2023

CHIEF JUSTICE

Hon'ble Shri Justice Ravi Malimath
Chief Justice

PUISNE JUDGES

Hon'ble Shri Justice Sheel Nagu
Hon'ble Shri Justice Sujoy Paul
Hon'ble Shri Justice Rohit Arya
Hon'ble Shri Justice Sushrut Arvind Dharmadhikari
Hon'ble Shri Justice Vivek Rusia
Hon'ble Shri Justice Anand Pathak
Hon'ble Shri Justice Vivek Agarwal
Hon'ble Smt. Justice Nandita Dubey
Hon'ble Shri Justice Vijay Kumar Shukla
Hon'ble Shri Justice Gurpal Singh Ahluwalia
Hon'ble Shri Justice Subodh Abhyankar
Hon'ble Shri Justice Sanjay Dwivedi
Hon'ble Shri Justice Vishal Dhagat
Hon'ble Shri Justice Vishal Mishra
Hon'ble Shri Justice Anil Verma
Hon'ble Shri Justice Satyendra Kumar Singh
Hon'ble Smt. Justice Sunita Yadav
Hon'ble Shri Justice Deepak Kumar Agarwal
Hon'ble Shri Justice Pranay Verma
Hon'ble Shri Justice Maninder Singh Bhatti
Hon'ble Shri Justice Dwarka Dhish Bansal
Hon'ble Shri Justice Milind Ramesh Phadke
Hon'ble Shri Justice Amar Nath (Kesharwani)
Hon'ble Shri Justice Prakash Chandra Gupta
Hon'ble Shri Justice Dinesh Kumar Paliwal
Hon'ble Shri Justice Roopesh Chandra Varshney
Hon'ble Smt. Justice Anuradha Shukla
Hon'ble Shri Justice Sanjeev Sudhakar Kalgaonkar
Hon'ble Shri Justice Prem Narayan Singh
Hon'ble Shri Justice Achal Kumar Paliwal
Hon'ble Shri Justice Hirdesh
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FIVE YEARS' DIGEST OF THE INDIAN LAW REPORTS M.P. SERIES FROM 2016 to 2020

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A

ACCOMMODATION CONTROL ACT, M.P. (41 OF 1961)

– Section 6(1)(2) and Contract Act (9 of 1872), Section 23 – Lawful agreement – Rent agreement to the effect that if tenant do not vacate the premises after 2 years, the tenant would pay enhanced rent – As rent at enhanced rate was in continuation of tenancy, the provision was contrary to provisions of Section 6(1) & (2) of Act, 1961: *Rajendra Kumar Gupta Vs. Ram Sewak Gupta, I.L.R. (2016) M.P. 1429*

– Section 12(1)(a) – Arrears of Rent – Demand Notice – Held – After service of demand notice, defendant/tenant neither replied the same nor deposited the arrears of rent within period of two months – Decree of eviction u/S 12(1)(a) rightly passed – Appeal dismissed: *Ashok Kumar Vs. Babulal Sahu, I.L.R. (2020) M.P. 941*

– Section 12(1)(a) – Eviction Decree – Arrears of Rent – Concurrent decree of eviction u/S 12(1)(a) against Appellant/defendant (tenant) – Appeal against – Held – Apex Court has concluded that once non-payment of rent is established then Court has no option but to decree the suit on the ground contemplated u/S 12(1)(a) of the Act of 1961 – Subsequent payment of rent during the first and second appeal is of no relevance – Courts below rightly decreed the suit of plaintiff– No substantial question of law exists – Second Appeal dismissed: *Ummed Baghel Vs. Mohd. Anees Khan, I.L.R. (2017) M.P. 2428*

– Section 12(1)(a) & 12(1)(c) – Eviction Suit by Co-owners – Maintainability – Held – Appellants, who were earlier tenants, purchased the property through co-owner and stepped into shoes of and acquired the status of co-owners – Fact of partition is established, thus suit for eviction by other co-owners on basis of relationship of landlord and tenant against the appellants is not maintainable – Suit dismissed – Appeal allowed: *Sanjay Rai Vs. Govind Rao, I.L.R. (2019) M.P. 1461*

– Section 12(1)(a) & 12(1)(c) – Landlord – Held – Section 12(1)(a) is not dependent on the provisions of section 12(1)(c) – Further held – For the purpose of

Section 12(1)(a), it is not necessary that the landlord has to be owner of property also: *Babu Lal Vs. Sunil Baree, I.L.R. (2017) M.P. 2692*

– Section 12(1)(a) & 12(1)(c) and Transfer of Property Act (4 of 1882), Section 109 – Original owner sold the property to respondents (Plaintiff) – For purpose of decree u/S 12(1)(a), appellant being tenant of original owner shall become tenant of transferee by virtue of Section 109 of the Act of 1882: *Babu Lal Vs. Sunil Baree, I.L.R. (2017) M.P. 2692*

– Sections 12(1)(a), 12(1)(c), 12(1)(f) & 12(1)(h) – Appreciation of Evidence – Grounds – Held – Although grounds for eviction u/S 12(1)(c), 12(1)(f) & 12(1)(h) are not established, but there is a concurrent finding on the grounds u/S 12(1)(a) which is further established before this Court – No justification to set aside the entire decree – Plaintiff entitled for decree of eviction of appellant u/S 12(1)(a) of the Act – Appeal dismissed: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Sections 12(1)(a), 12(1)(c), 12(1)(f) & 13 – Bonafide Requirement and Arrears of Rent – Concurrent decree of eviction against tenant – Held – Courts below has concurrently held that plaintiff has proved his bonafide need and such concurrent findings are not liable to be disturbed in Second Appeal – Further held – After receiving notice for arrears of rent, tenant sent the pay order to landlord's counsel who was not authorized to receive the same and thus counsel rightly refused to accept the rent – Defendant was required to pay rent to plaintiff and not to his counsel – Appellant in his cross examination has admitted that he deposited the arrears of rent in Court after 1 ½ months from receipt of summons – There was a delay in depositing the rent on time – Appellate Court rightly granted decree u/S 12(1)(a) of the Act of 1961 – Appeal dismissed: *Satish Vs. Murlidhar, I.L.R. (2017) M.P. 1706*

– Sections 12(1)(a), 12(1)(c), 12(1)(f) & 23 (J) – Category of Special Landlord – Jurisdiction of Civil Court – Trial Court held, that although plaintiff comes under the category of special landlord, but he filed composite suit u/S 12(1)(a), 12(1)(c) and 12(1)(f) of the Act of 1961, therefore Civil Court has jurisdiction to entertain the suit – Supreme Court also held that composite suit for eviction of tenant can be filed by plaintiff of special category: *Satish Vs. Murlidhar, I.L.R. (2017) M.P. 1706*

– Sections 12(1)(a), 12(1)(c) & 13(1) – Title of Landlord & Arrears of Rent – Concurrent eviction decree u/S 12(1)(a) & 12(1)(c) – Held – It is concurrently established that there was relationship of landlord and tenant between parties and appellant was defaulter in payment of regular rent as even after receiving demand notice and committed error u/S 13(1) of the Act – Concurrent findings that appellant by denying title of respondent/plaintiff caused substantial injury to his right and title in

suit property – No substantial question of law requiring consideration – Appeal dismissed: *Babu Lal Vs. Sunil Baree, I.L.R. (2017) M.P. 2692*

– Sections 12(1)(a), 12(1)(e) & 12(1)(f) – Arrears of Rent – Owner of suit property Birdi Bai during her lifetime through a registered document endowed the property to a Charitable Trust but later she revoked the document by another document dated 03.11.79 – Appellant/plaintiff (daughter-in-law of Birdi Bai) filed a eviction suit against the tenants on the ground that in respect of the suit property, her mother-in-law executed a will in her favour on 24.10.79 and because of *bonafide* requirement and on the ground that tenants have not paid arrears of rent within stipulated period despite service of notice u/S 12(1)(a) of the Act of 1961 – Trial Court held plaintiff to be the owner of suit property and landlord of respondent and decreed the suit in her favour – Respondents filed appeal whereby the same was allowed holding that once public trust is created, it cannot be dissolved by the creator of trust and thus plaintiff was not the landlord of respondents – Challenge to – Held – Issue relating to revocation of trust cannot be again considered in this appeal as the same has been decided between the trust and appellant in F.A. No. 22/1997 and has attained finality in favour of appellant and accordingly by way of the will, appellant is owner of the property and also the landlord of respondents – Further held – Both the Courts below recorded a finding of alternate accommodation of respondents and the fact that they are living there – Appellant entitled to a decree of eviction on this ground – Respondents directed to hand over vacant possession of suit property to appellant – Appeal allowed: *Manjula Bai Vs. Premchand, I.L.R. (2017) M.P. 1119*

– Section 12(1)(a) & 12(1)(f) and Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Arrears of Rent – Bonafide Requirement – Amendment in Appeal – Permissibility – Respondent/Plaintiff filed a suit for eviction against the Appellant/Defendant seeking a decree u/S 12(1)(a) and 12(1)(f) – Trial Court decreed the suit in favour of plaintiff u/S 12(1)(a) of the Act of 1961 – Both the parties filed separate appeals, Plaintiff's appeal was registered as C.A. No. 145-A/2014 whereas Defendant's appeal was registered as C.A. No. 144-A/2014 – Appellate court allowed the appeal filed by respondent/plaintiff and decree was passed in his favour u/S 12(1)(a) & 12(1)(f) of the Act of 1961 whereas appeal filed by the Appellant/Defendant was dismissed – Appellant/Defendant filed this present second appeal only challenging dismissal of his appeal No. 144-A/2014 – Later, an application under Order 6 Rule 17 CPC was filed by the appellant seeking amendment in the second appeal – Held – If application for amendment is allowed, that would mean that appellant is permitted to challenge the judgment and decree passed in C.A. No. 145-A/2014 after a period of one and half years and also by-passing the provisions of Limitation Act – Application for amendment rejected – Further held – Record shows that Trial Court has considered the documents produced and have recorded a finding after evaluation of evidence

that documents do not prove that rent was deposited in accordance with law – Decree of eviction rightly passed – Appeal dismissed: *Madhav Gogia Vs. Smt. K. Fatima Khursheed, I.L.R. (2017) M.P. 1147*

– Section 12(1)(a) & 12(1)(n) – Arrears of Rent – Sub-tenant – Eviction Suit – Tenancy of open plot /land – Held – No protection against eviction is available to appellant being a sub-tenant – Original tenant is defaulter in payment of rent and has also not preferred any appeal – Plaintiff/owner proved his requirement for construction – Trial Court justified in decreeing the suit – Appeal dismissed: *Hindustan Petroleum Corporation Ltd. Vs. Smt. Sangita, I.L.R. (2018) M.P. 2902*

– Sections 12(1)(a), 12(3) & 13(1) – Arrears of Rent – Notice – Suit for eviction and arrears of rent – Held – Respondents/tenants did not entered the witness box to deny the acknowledgement of notice sent by appellant regarding arrears of rent – Section 13(1) contemplates deposit of rent regularly on month by month basis whereas respondent/defendant deposited rent with permission of Court from May 2008 to October 2008 but thereafter he failed to deposit the rent violating provisions of Section 12(3) for which his right of defence was closed on non-compliance of Section 13(1) of the Act – Appellant entitled to decree u/S 12(1)(a) and is hereby granted – Appeal partly allowed: *Sushil Nigam Vs. Jahur Khan, I.L.R. (2019) M.P. 1104*

– Section 12(1)(a) & 13(1) – Arrears of Rent – Service of Notice – Eviction suit filed by the Respondent/Plaintiff u/S 12(1)(a) was dismissed – Appeal filed by plaintiff was allowed and decree was passed u/S 12(1)(a) – Second appeal by the Appellant/tenant on the ground that no notice for demand of arrears of rent was ever served thus no compliance u/S 13(1) was made – Held – The closed envelope (Article-'A') proves that notice was properly addressed to the appellant/tenant, sent through registered post with acknowledgment – Endorsement in the envelope "refused to accept, hence returned" - Appellant has not stated that postman had recorded a wrong endorsement – Provisions of Section 13(1) complied with – No error, illegality or irregularity by the court below while decreeing suit for eviction – Appeal dismissed: *Bhaiya Lal Rajak Vs. Moh. Shamim, I.L.R. (2017) M.P. *77*

– Sections 12(1)(a), 13(1) & 13(2) – Appeal against concurrent decree of eviction u/S 12(1)(a) against Appellant/defendant (tenant) – Held – Where the rate of rent and quantum of arrears of rent are disputed, whole of section 13(1) of the Act becomes inoperative till provisional fixation of monthly rent is done by the Court u/S 13(2) of the Act – Further held – U/S 13(2) of the Act, Court is duty bound only to fix provisional rent and in the instant case, Trial Court fixed the provisional rent but as per the observation made by lower appellate court, tenant has not deposited the rent in accordance with the provisions of Section 13(1) of the Act – It is evident that

appellant/tenant has not complied with provisions of Section 13(1) of the Act as he was not regularly depositing the rent on monthly basis – Records further shows that tenant has not even made any application before the Courts below for condonation of defaults committed by him in depositing the rent – Courts below rightly decreed the suit of plaintiff u/S 12(1)(a) of the Act – Second Appeal dismissed: *Virendra Prajapati Vs. Shri K.B. Agarwal, I.L.R. (2018) M.P. 518*

– Sections 12(1)(a), 13(1) & 13(6) – Arrears of Rent – Held – Even if tenant has objection regarding apportionment of rent amount, he shall deposit the rent before trial Court – Merely raising issue of apportionment, he can't claim that he is not under obligation to pay rent to anybody until his objection is adjudicated by Court – In non-compliance of provision of Section 13(1), tenant is liable to be evicted under Section 12(1)(a) of the Act of 1961: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Section 12(1)(b) – Sub-letting – Direct evidence – It is settled position of law that direct evidence on the point of sub-letting could not be expected from the landlord: *Ratan Singh Yadav Vs. Bhagwat Singh Parmar, I.L.R. (2017) M.P. 668*

– Section 12(1)(b) – Unlawful Sub-letting – Held – Defendant No. 1 & 2 are father and son – Shops and Godown were given on rent without describing any nature of business – Defendant No. 2 is also using part of accommodation for non-commercial purpose – No unlawful sub-letting, assignment or parting of accommodation – Decree u/S 12(1)(b) rightly denied: *Sushil Nigam Vs. Jahur Khan, I.L.R. (2019) M.P. 1104*

– Section 12(1)(b) & 12(1)(i) – Sub-letting and alternate accommodation – Appeal by tenant – Concurrent findings of fact – Appellants not living jointly – Appellant No. 1 handing over possession of suit premises to his brother, appellant No. 2 – Appellant No. 2 not examined – No documentary evidence regarding payment of rent by appellant No. 2 to previous landlord – Money order receipts only shows that it was sent to the earlier owner but sender's name is not mentioned in the receipts – Admission by appellant No. 1 (original tenant) that he has an alternate accommodation in the same city – Held – It is very much evident that appellant No. 1 has inducted appellant No. 2 in the premises, so it amounts to sub-letting – No substantial question of law – Appeal dismissed: *Ratan Singh Yadav Vs. Bhagwat Singh Parmar, I.L.R. (2017) M.P. 668*

– Section 12(1)(c) – Denial of Title – Effect – Held – When derived title has not been accepted and no rent has been paid and validity of transaction has been challenged in a separate suit, it cannot be said that such act of defendant/tenant adversely affects the interest of landlord – Defendant/tenant can challenge the derived title of plaintiff

and if the challenge is bonafide, decree u/S 12(1)(c) cannot be granted: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Section 12(1)(c) – Denial of title – Tenant in his written statement admitted himself to be a tenant having taken shop on tenancy from plaintiff – However called upon plaintiff to prove his title – Defendant never disowned that he is not a tenant – Such an act of defendant does not attract the provisions of Section 12(1)(c) – Appeal allowed: *Rajendra Kumar Gupta Vs. Ram Sewak Gupta, I.L.R. (2016) M.P. 1429*

– Section 12(1)(c) – Nuisance – Held – Dispute of ownership of plaintiff was pending before the Court and thus defendants bona-fidely denied the title of plaintiff, hence did not cause any nuisance: *Sushil Nigam Vs. Jahur Khan, I.L.R. (2019) M.P. 1104*

– Section 12(1)(c) & 12(1)(f) – See – Civil Procedure Code, 1908, Order 6 Rule 17: *Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs., I.L.R. (2017) M.P. 1457*

SYNOPSIS : Section 12(1)(f)

1. Availability of Another Accommodation

– Section 12(1)(f) – Bona fide need – Held – Mere availability of another accommodation does not disqualify the landlord from claiming eviction: *Vinod Kumar Goyal Vs. Avneet Kumar Gupta, I.L.R. (2016) M.P. 2325*

2. Burden of Proof

– Section 12(1)(f) – Bonafide Requirement – Burden of Proof – Held – No specific evidence by defendant/tenant to establish alternate suitable accommodation in exclusive ownership of plaintiff/landlord – Eviction decree u/S 12(1)(f) rightly passed: *Ashok Kumar Vs. Babulal Sahu, I.L.R. (2020) M.P. 941*

3. Concurrent Findings

– Section 12(1)(f) and Civil Procedure Code (5 of 1908), Section 100 – Bonafide Requirement – Findings of Fact – Re-appreciation – Held – Bonafide

requirement for non-residential purpose is a finding of fact – Plaintiff failed to produce any document which establishes that he has started a business in rented accommodation – Concurrent findings against the respondent/ plaintiff – Re-appreciation of fact not permissible in Second Appeal – No substantial question arises – Cross objection regarding bonafide requirement dismissed: *Tarunveer Singh Vs. Mahesh Prasad Bhargava, I.L.R. (2017) M.P. 3028*

4. Continuation of Requirement

– Section 12(1)(f) – Bonafide Requirement – Existence of – Held – An appeal is a continuation of first suit – Landlord's need must be shown to continue to exist at appellate stage- If tenant is in a position to show that need or requirement no more exist because of subsequent events, it would be open to him to point out such events and the Court including appellate Court has to be examine, evaluate and adjudicate the same: *Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs., I.L.R. (2017) M.P. 1457*

5. Death of Plaintiff

– Section 12(1)(f) – Bonafide Requirement – Death of Plaintiff – Effect – Held – Plaintiff expired during pendency of this second appeal – Bonafide need of deceased plaintiff, already established and cannot be said to have lapsed on his death unless it is established that there is nobody in family of deceased to run the business – LR's of plaintiff already on record – Decree of eviction cannot be denied – Appeal dismissed: *Ashok Kumar Vs. Babulal Sahu, I.L.R. (2020) M.P. 941*

6. Pleading/Proof of Reconstruction

– Section 12(1)(f) & 12(1)(h) – Bonafide requirements and reconstruction – Landlords have pleaded and proved that they shall be starting their business of lodging in the suit accommodation after making reconstruction – A suit on both grounds is maintainable and both grounds are not destructive to each other – If the landlord pleads that he will start his business after carrying out repairs or reconstruction there is nothing wrong or illegal – Such a suit basically is suit on the ground of bona fide requirement and such a suit filed on both grounds is maintainable and can be decreed: *Rajesh Vs. Smt. Rajkunwar Through LRs., I.L.R. (2016) M.P. 1441*

7. Rebuttal/Objection

– Section 12(1)(f) – Bonafide Requirement – Held – Plaintiff pleaded that suit premises is a shop for which there was no rebuttal in written statement – No objection by tenant before the courts below – No evidence on record that suit premises was let out to defendant for other than non-residential purpose – It cannot be said

that plaintiffs are not entitled to get order of eviction u/S 12(1)(f) of the Act: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

• **– Section 12(1)(h) & 12(7)** – Plan of Reconstruction and Estimate – Pleading & Proof – Held – No averment in pleading and no evidence with regard to plan of reconstruction, estimation of expenditure and availability of necessary fund for same, thus as per Section 12(7) of the Act, no order of eviction of tenant can be made – In absence of proof of such mandatory requirement of Section 12(7) of the Act, it cannot be said that plaintiff has established ground for eviction u/S 12(1)(h) of the Act: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Section 12(1)(i) – Alternate Accommodation – Suitability – Burden of Proof – Held – Once alternate accommodation accepted by defendant/tenant, now to wriggle out of the ambit of Section 12(1)(i) of the Act, it was the burden of tenant to prove unsuitability of the same for residential purpose by placing relevant documents – As tenant failed to prove the same, he cannot be given premium for his own omission – Lower Court wrongly shifted the burden of proof over plaintiff/landlord – Impugned judgments set aside – Suit decreed – Appeal allowed: *Kastur Chand Jain (Since Dead) Through LR Ashish Jain Vs. Keshri Singh, I.L.R. (2019) M.P. 2319*

– Section 12(1)(i) and Evidence Act (1 of 1872), Section 114(g) – Adverse Inference – Held – Since defendant/tenant has withheld his evidence and admitted that he did not produce the sale deed of alternate accommodation owned by him and has not assigned any reasons for such omission, adverse inference ought to have been drawn against him u/S 114(g) of the Evidence Act: *Kastur Chand Jain (Since Dead) Through LR Ashish Jain Vs. Keshri Singh, I.L.R. (2019) M.P. 2319*

– Section 12(1)(n) – Eviction Decree – Entitlement – Held – This Court had earlier concluded that in case, the lease is of open land and landlord wants to make construction, he is entitled for decree u/S 12(1)(n) of the Act of 1961: *Hindustan Petroleum Corporation Ltd. Vs. Smt. Sangita, I.L.R. (2018) M.P. 2902*

– Section 12(1)(o) – Condition and Compensation – Held – In the present case, decree was passed u/S 12(1)(o) of the Act and compensation is to be given for the reason that appellant was a tenant of respondents for almost 25 years and cause of action dates back to 1992-93 when the appellant encroached upon excess area and at that time monthly rent was Rs. 350 – Compensation of Rs. 1 lakh is just and proper – Hence, if the encroached portion shown in the plaint is vacated by the appellant/tenant and Rs. 1 lakh is paid to the respondents as compensation within three months from today, then he shall not be evicted from the suit accommodation on the ground of Section 12(1)(o) of the Act – Appeal allowed: *Rajkumar Chug Vs. Dheerendra Chug, I.L.R. (2017) M.P. 638*

– Section 12(1)(o) & 12(11) – Question involved – Whether decree for possession can be granted without granting time for removing the possession from the portion not let out to the defendant as provided u/S 12(11) of the M.P. Accommodation Control Act, 1961 – Held – Unless an opportunity to the tenant is given to vacate the portion of accommodation not let out to him and to pay the landlord amount of compensation, the decree u/S 12(1)(o) cannot be issued – It is the duty of the Court to pass a conditional decree, with the stipulation of time of vacation of trespassed portion and to pay compensation: *Rajkumar Chug Vs. Dheerendra Chug, I.L.R. (2017) M.P. 638*

– Section 12(3) & 13(1) – Arrears of Rent – Protection to Tenant – Held – Defendant/tenant failed to show any reasons for default in payment of rent and thus unable to establish the compliance of provisions of Section 13(1) – He continuously, on several occasions violated provisions of Section 13(1) – Not entitled for benefits of Section 12(3) of the Act: *Ashok Kumar Vs. Babulal Sahu, I.L.R. (2020) M.P. 941*

– Section 13(1) & 12(1)(a) – Eviction Suit – Arrears of Rent – Application for Extension of Time – Decree u/S 12(1)(a) against Appellant/defendant (tenant) – Held – Appellant failed to deposit the arrears of rent within the stipulated period of one month from date of service of summons – No application seeking extension of time – No explanation for delay – Appellant can't seek protection from decree of eviction – For the first time, application for extension of time filed before this Court at second appellate stage – Application rejected – Judgment and decree rightly passed u/S 12(1)(a) – Appeal dismissed: *Tarunveer Singh Vs. Mahesh Prasad Bhargava, I.L.R. (2017) M.P. 3028*

SYNOPSIS : Section 23-A

1. Competent Authority **2. Coparcenary Property**

3. Grounds

1. Competent Authority

– Sections 23-A & 23-J – Authority of RCA – Maintainability – Under Chapter III-A of the Act for the purpose of eviction on the ground of bonafide need RCA is a competent authority – Wrong quoting of provision by itself would not denude the power of the authority: *Sunil Singh Vs. Smt. Meenakshi Nema, I.L.R. (2016) M.P. 2039*

– Sections 23-A & 23-J – Objection about Non-Registration of Adoption Deed – Since the objection was not raised before RCA he was not required to examine the same: *Sunil Singh Vs. Smt. Meenakshi Nema, I.L.R. (2016) M.P. 2039*

2. Coparcenary Property

– Section 23-A – Coparcenary property – Partition held – The application for eviction filed before completion of one year from the date of partition – The landlord has right of ownership which became absolute upon partition – One coparcener can file suit for eviction – Application maintainable: *Rajesh Pandey Vs. Geeta Devi Poddar, I.L.R. (2016) M.P. 223*

– Section 23-A – Landlord – Application for eviction filed in October, 2011 – Maintainability – Accommodation is coparcenary property – Husband died on 06.07.2007 – Partition held on 29.03.2011 – Applicant became owner – The applicant (landlord) had right of ownership in coparcenary property which became absolute after partition – One of the coparceners can file suit for eviction if others have no objection – Hence application is maintainable: *Rajesh Pandey Vs. Geeta Devi Poddar, I.L.R. (2016) M.P. 223*

3. Grounds

– Section 23-A – Bonafide need – Agreement to sale executed – During pendency of proceedings it is cancelled – Need is bonafide: *Rajesh Pandey Vs. Geeta Devi Poddar, I.L.R. (2016) M.P. 223*

– Section 23-A – Bonafide need – Applicant old lady – Living in second floor – Difficult to climb second floor – Need – Not whimsical or fanciful – Genuine: *Rajesh Pandey Vs. Geeta Devi Poddar, I.L.R. (2016) M.P. 223*

– Section 23-A – Revision against order of eviction and to pay arrears of rent – Held – Under Section 23-A eviction can be sought on the ground of bonafide requirement – Neither the non-payment of rent nor recovery of rent can be subjected under Chapter III-A of the Act: *Sunil Singh Vs. Smt. Meenakshi Nema, I.L.R. (2016) M.P. 2039*

● **– Section 23-A(b)** – Eviction suit – Ground – Bonafide need for non-residential purpose – Owner – Meaning – Held – The meaning of the term "owner" has to be understood vis-à-vis a tenant and not absolute ownership and it means that the owner should be something more than the tenant: *Paramjeet Kaur Bhambah (Smt.) Vs. Smt. Jasveer Kaur Wadhwa, I.L.R. (2016) M.P. 2046*

– Section 23-A(b) – Eviction suit – Plaintiff widow – Bonafide need for non-residential purpose – Rent Controlling Authority dismissed the application u/S 23-A(b) of the Act of 1961, on the ground that applicant failed to prove the ownership and bonafide need – Held – The ownership in eviction suit has to be proved vis-à-vis the tenant and not absolute ownership and no evidence in rebuttal has been adduced

by the non-applicant on the point of bonafide need & even defence of the non-applicant against eviction has been struck out – Application u/S 23-A(b) of the Act of 1961 allowed – Revision allowed: *Paramjeet Kaur Bhambah (Smt.) Vs. Smt. Jasveer Kaur Wadhwa, I.L.R. (2016) M.P. 2046*

– Section 23-E – Application for eviction on ground of bonafide requirement – Order passed by the RCA shows that there is no appreciation of evidence and order has been passed in a cryptic manner – No discussion of evidence put forth by both the parties – Eviction of the applicant from the disputed premises is apparently perverse – Impugned order set aside – Matter remanded to RCA for passing order afresh after due appreciation of evidence on record: *Rajendra Prasad Gupta Vs. Smt. Sushila Devi Jaswani, I.L.R. (2017) M.P. 417*

– Section 23 (E) – Revision – Order of eviction passed by the Rent Controlling Authority – Challenge by tenant – Ground – Order of eviction passed by the SDO is null & void, as no notification was published of his appointment as Rent Controlling Authority – Held – The defective appointment of a *de facto* judge may be questioned directly in a proceedings to which he may be a party, but it cannot be permitted to be questioned in a litigation between the two private litigants, as in this case – Revision dismissed: *A.M. Nema Vs. G.P. Pathak, I.L.R. (2016) M.P. *23*

– Section 23-J – Non-applicant being widow is a landlord within the purview of Section 23-J of the Act – Hence she is entitled under Section 23-J to file suit on the ground of bonafide requirement: *Sunil Singh Vs. Smt. Meenakshi Nema, I.L.R. (2016) M.P. 2039*

ADHYAPAK SAMVARG (EMPLOYMENT & CONDITIONS OF SERVICES) RULES, M.P., 2008

– Education Guarantee Scheme, M.P., 1997, Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, M.P. 2001 and Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Niyam, M.P., 2005 – Representation of the petitioner has been rejected and recovery ordered against him – Petitioner was appointed as Guruji in the year 2007 – He was appointed as Samvida Shala Shikshak Grade-III in year 2012 by an order dated 11.10.2012 and he was absorbed as Adhyapak on 25.06.2015 – Certainly he is not at all entitled for a regular pay scale right from the year 2007 – At the best he is entitled for a pay scale of Samvida Shala Shikshak Grade-III only w.e.f. 11.10.2012 and pay scale to the post of Adhyapak only w.e.f. 25.06.2015 – Order of recovery passed by the respondents does not warrant any interference – Petition dismissed: *Vinod Rathore Vs. State of M.P., I.L.R. (2017) M.P. 823*

ADIM JAN JATIYON KA SANRAKSHAN (VRAKSHON ME HIT) ADHINIYAM, M.P. (25 OF 1999)

– Section 4 & 9(2) and Land Revenue Code, M.P. (20 of 1959), Section 253 – Confiscation and Penalty – Held – As per Section 4 of Adhiniyam of 1999, Bhumiswami belonging to aboriginal tribe who intends to cut any specified tree in his land shall apply for permission to Collector – Merely belonging to aboriginal tribe would not entitle him to cut the trees standing on his land on his own will – Adhiniyam of 1999 not only protects persons of aboriginal tribe but also protects the trees as well as the same are government property: *Samlu Gond Vs. State of M.P., I.L.R. (2017) M.P. 2684*

– Section 9 and Land Revenue Code, M.P. (20 of 1959), Section 50 & 240 – Suo Motu Revisional Power – Competent Authority – Held – SDO passed final order whereas as per provisions of Adhiniyam of 1999, only Collector or Additional Collector is empowered to pass final order in respect of trees which are standing on land of aboriginal tribe and have been cut – When initially original order passed by SDO was without jurisdiction, Collector wrongly exercised its suo motu revisional power u/S 50 of the Code – Impugned order quashed – Writ petition allowed: *Samlu Gond Vs. State of M.P., I.L.R. (2017) M.P. 2684*

ADMINISTRATIVE LAW

– Applicability of the Act – Held – The Central Legislation of 1972 must prevail over the Pension Rules of 1972 – Applicability and benefits of Central enactment cannot be taken away by issuing administrative instructions/orders or statutory rules: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

– Principle of Estoppel – Held – Principle of estoppel is not applicable where huge public interest is involved – Petitioner authorities acted in flagrant breach of agreement and Rules causing harm to public interest and loss to public exchequer – No estoppels operates against statutory provisions – Entire exercise initiated on application of promoter, he cannot be held blameless: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Test for likelihood of bias – Bias depends on not what actually done, but depends upon what might appear to be done – In administrative law rules of natural justice are foundational and fundamental concepts – Principles of natural justice are part of legal and judicial procedures and also applicable to administrative bodies in its decision making having civil consequences – Decisions of committee whether administrative or quasi judicial function – Held – Quasi judicial function: *Ajay Vs. Kuladhipati, Devi Ahilya Vishwavidyalaya, Indore, I.L.R. (2016) M.P. 2721 (DB)*

ADMISSION IN B.D.S. COURSE

– Admission – Petitioner association filed the present M.C.C. for extension of time to comply with orders of this Court in original writ petition, in which association was a respondent – Held – Present case has been filed for extension of time for affording time to Central Government, so that a decision on second recommendation forwarded by D.C.I. for regularizing the illegal admissions can be taken, whereas such issue has already been examined in detail by the High Court in earlier petitions and also by the Supreme Court and even Central Government has already previously dismissed such a recommendation – Further held – Petitioner has never challenged the original order passed by Dental Council of India nor it has opposed the same before any Court of law – Present application amount to abuse and misuse of process of law and is absolutely misconceived, mischievous and vexatious – M.C.C. dismissed with cost of Rs. 20,000: *Association of Private Dental and Medical Colleges Vs. Union of India, I.L.R. (2017) M.P. 1508 (DB)*

ADVERSE POSSESSION

– Agreement – Held – It is undisputed that respondents are titleholder of property and are claiming possession – Appellant was placed in possession by respondents on account of agreement which was later terminated through a notice – He was in permissive possession – Plea of adverse possession is not available to appellant: *Mishrilal Through Legal Heirs Vs. Samarthmal, I.L.R. (2018) M.P. 2909*

– Burden of Proof – Held – Respondent/ plaintiff claiming the property on ground of adverse possession – Onus lay on plaintiff to establish when and how he came into possession, nature of his possession, factum of possession known and hostile to other parties, continuous possession over 12 years which was peaceful, open and hostile to the knowledge of true owner – Plaintiff failed to discharge the onus – Further, plaintiff claiming adverse possession from 1960-61 but the same was sold by owner on 11.10.1972 i.e. before expiry of 12 years thus claim of uninterrupted possession is unsustainable – Impugned judgment set aside – Suit dismissed: *Brijesh Kumar Vs. Shardabai (Dead) By L.Rs., I.L.R. (2020) M.P. 543 (SC)*

– Nature and Essentials thereof – Held – Non-use of property by the owner even for a long time won't affect his title – Adverse possession is a hostile possession by clearly asserting hostile title in denial of title of true owner – Party claiming adverse possession must prove that his possession is *"nec vi, nec clam, nec precario."*: *Sunil Rao Vs. State of M.P., I.L.R. (2016) M.P. 2009*

ADVERSE REMARKS

– Opportunity of Hearing – Held – Apex Court concluded that casting aspersions on a witness or any other person not before him affects his character, reputation or his career – Opportunity of hearing should be given to such person, otherwise offending remarks would be in violation of natural justice: *Monika Waghmare (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1581 (DB)*

ADVOCATES ACT (25 OF 1961)

– Role of State Bar Council – Call from Council to Lawyers to Abstain from Judicial Work – Legality – Held – State Bar Council is a creation of the Act of 1961 and it derives its authority from the Act and has to discharge functions which are conferred on it by the said Act – No provision of the Act confers power to such statutory body to call the members to abstain from judicial work which is the responsibility of every member of Bar in terms of provisions of Act itself – Such decision and call of the State Bar Council is illegal, unconstitutional and against statutory provisions as well as contrary to judgments of Supreme Court – Advocates in State directed to resume work forthwith: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2129 (DB)*

– Sections 7, 34, 48a & 49 – Constitution – Article 145 & 226 – Strike – Petitioner expelled from the membership of Bar Association in the backdrop of defiance of petitioner to abide by resolution passed by Bar Association to abstain from Court work – In view of law expounded by Supreme Court in the case of Harish Uppal (Ex. Capt.) Vs. Union of India, the decision taken by Bar Association is non-est in the eyes of law – Petition allowed: *Banwari Lal Yadav Vs. High Court Bar Association, I.L.R. (2016) M.P. 1964 (DB)*

– Section 15 & 28, Advocates Welfare Fund Act, M.P., (9 of 1982), Section 16 and Model Bye-Laws for Bar Association, M.P. Clause 26 & 27 – Elections and Internal Affairs of Bar Association – Interference by State Bar Council – Held – The State Bar Council or its appellate Committee has no power, authority or jurisdiction to interfere with the process of election or to interfere with internal affairs of Bar association regarding membership or its suspension etc. – No provision of statute or any Rule has been produced which confers power to State Bar Council to interfere with election process and internal affairs of the Bar Associations – Impugned orders passed by the respondents are quashed – Petition allowed: *Bar Association Lahar, Dist. Bhind Vs. State Bar Council of M.P., I.L.R. (2018) M.P. 667 (DB)*

– Section 34 and High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012 – Abstaining from Judicial Work – Duties of Lawyer – Held – Advocates

are officers of Court, their duty is to aid and assist in dispensation of justice – Strike or abstention from work impairs administration of justice and is inconsistent with duties of an Advocate – By abstaining from work, members of the bar do not help anybody – Members being protectors of independence of judiciary must rise to maintain the same by being an active participant in administration of justice and not by withdrawing from the pious duty enjoined on them in terms of Act of 1961: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2401 (DB)*

– Section 34 and High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012 – Abstaining from Judicial Work – Rights of Litigants – Held – Litigants has a right to get justice and he will get the same only if Courts are functioning in Country – Members of Bar cannot make the third pillar of democracy non-functional by deciding to withdraw from work: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2401 (DB)*

– Section 34 and High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012 – Call to Abstain from Judicial Work from State Bar Council/High Court Bar Associations & District Court Bar Associations – Legality – Held – High Court is directed to examine and incorporate in Rules of 2012, the consequences of not appearing in the Court by members of Bar, office bearers of Bar Associations and/or the State Bar Council, including the action of debarment of such erring members and the period thereof – Directions issued – Petition disposed: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2401 (DB)*

ADVOCATES WELFARE FUND ACT, M.P. (9 OF 1982)

– Section 16 – See – Advocates Act, 1961, Section 15 & 28: *Bar Association Lahar, Dist. Bhind Vs. State Bar Council of M.P., I.L.R. (2018) M.P. 667 (DB)*

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION ACT (52 OF 1987)

– Section 2(g) and Architects Act (20 of 1972), Section 3 – Implied Repeal – Held – Principle of implied repeal cannot apply so far as provisions relating to architecture education is concerned just on the basis of the 1987 Act having become operational – Act of 1972 cannot be held to be repealed by implication for the sole reason of inclusion of word "architecture" in the definition of technical education: *All India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture, I.L.R. (2020) M.P. 562 (SC)*

– Section 2(g) & 10 – Technical Education – Held – Definition of technical education would have to be given such a construction and the word "architecture"

should be treated to have been inapplicable in cases where AICTE imports its regulatory framework for institutions undertaking technical education – Act of 1987 is primarily concerned with setting-up and running of a technical institution and not with regulating the professions of individuals qualifying from such institutions: *All India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture, I.L.R. (2020) M.P. 562 (SC)*

– Sections 3, 22 & 23 – See – Architects Act, 1972, Sections 3, 17, 18, 19, 44 & 45: *All India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture, I.L.R. (2020) M.P. 562 (SC)*

APPOINTMENT

– Anganwadi Karyakarta – Weighted Marks – Entitlement – Held – Petitioner does not possess 5 years teaching experience as Didi, hence not entitled for 10 weighted marks – Further, petitioner vide affidavit projected herself to be a deserted woman whereas in the application form, she shown her status to be a married woman and not a deserted woman, hence not entitled for any weighted marks on this ground also – Merely to seek appointment, petitioner has suppressed the fact of residing with her husband and close relatives – Petition dismissed: *Anjul Kushwaha (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 698*

– Panchayat Karmi – Eligibility & Suitability – Held – Gram Panchayat was entitled to adjudge not only eligibility but also the suitability of candidate – Eligibility is to be seen on the cut off date whereas suitability can be adjudged even on date of consideration of appointment – There was a criminal case pending against respondent No. 4 on date of adjudging suitability and hence has become ineligible – Appointing authority was entitled to adjudge suitability of candidate on touchstone of criminal antecedents – Impugned order set aside – Appeal allowed: *Asha Kushwah (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *3 (DB)*

ARBITRATION ACT (10 OF 1940)

– Section 8 – Application for appointment of arbitrator – Acceptance of tender by respondent – Allegation and counter allegation about execution of formal agreement – Formal agreement duly signed not on record – Letters of correspondence and terms and conditions of tender documents on record – Whether there was an arbitration clause or not – Held – Yes, from the tender documents and correspondence between the parties it is duly inferred that until a formal agreement is prepared and executed, acceptance of tender will amount to binding contract and as arbitration clause is mentioned in general condition of contract, which is part of the contract, so there was arbitration agreement between the parties – Petition allowed and matter

remitted back to the trial Court for appointment of arbitrator: *Pooranchandra Agrawal Vs. Union of India, I.L.R. (2016) M.P. 1289*

– Section 8 and Arbitration and Conciliation Act (26 of 1996), Section 7 – Arbitration agreement – Application for appointment of Arbitrator – Arbitration application filed after coming into force of 1996 Act – Applicability thereof – Held – Even after repeal of 1940 Act, the dispute is to be decided as if there was an arbitration agreement between the parties in terms of the provisions of 1996 Act: *Pooranchandra Agrawal Vs. Union of India, I.L.R. (2016) M.P. 1289*

– Sections 14(2), 17 & 29 – See – Arbitration and Conciliation Act, 1996, Sections 34 & 85: *Union of India Vs. K.C. Sharma (M/s.), I.L.R. (2017) M.P. 77*

ARBITRATION AND CONCILIATION ACT (26 OF 1996)

– Binding on Tribunal – Held – The Arbitral Tribunal is not a Court of appeal and is bound by the terms of the agreement between parties: *The General Manager Vs. M/s. Raisingh & Company, I.L.R. (2018) M.P. 2018 (DB)*

– Pari Materia – Clause 3.11(A) – Held – As per clause of agreement, it was obligatory on part of contractor to bring approved quality of material – Later part of clause provides that no claim will be entertained except where there is any change of quarry for circumstances beyond control of contractor under written orders of Superintendent Engineer of work – It cannot be said that provisions of clause are pari materia with each other: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Practice – Judgment relied upon in the impugned order has since been overruled by larger bench of the High Court, impugned order is set aside – Appeal allowed – If any arbitration proceedings are pending will now be governed by the above judgment of High Court: *State of M.P. Vs. Ashoka Infraways Ltd., I.L.R. (2018) M.P. 1600 (SC)*

– Review – Non-Joinder of Necessary Party – Held – In the original arbitration case, petitioner No. 1 was properly represented by partners who participated in main proceedings and have also filed affidavits, thus it cannot be said that non-impleadment of petitioner No. 1 (firm) will amount to non-joinder of necessary party – No procedural impropriety – Petition dismissed: *Krupa Associates (M/s.) Vs. M/s. Prism Infra Project, I.L.R. (2019) M.P. 1848*

– Review – Scope & Jurisdiction – Held – Scope of review is very limited, it is only permissible in case of procedural error and wherein merits of the order cannot be examined by the Court – Further, if necessary party not been impleaded, such defect falls within ambit of procedural defect and can be considered in review

jurisdiction: *Krupa Associates (M/s.) Vs. M/s. Prism Infra Project, I.L.R. (2019) M.P. 1848*

– Sections 2(e), 20 & 11(6) – Appointment of Arbitrator – "Place" of Arbitration – Jurisdiction of Court – Held – "Venue" and "seat" cannot be treated as synonymous – "Seat" of arbitration constitutes the centre of gravity of arbitration whereas "venue" of arbitration can be altered and fixed as per convenience of parties – "Venue" will not determine the question of jurisdiction – This Court has jurisdiction to entertain application u/S 11(6) of the Act, because, except issuance of letter of acceptance, other necessary events which gives cause of action, has arisen within territorial jurisdiction of this Court – Further, agreement also do not specify any seat of arbitration – Arbitrator appointed – Application allowed: *Cobra CIPL Vs. Chief Project Manager, I.L.R. (2019) M.P. 926*

– Section 2(4)(5) & 9 – Applicability – Interim measures – Dispute – Works contract or concession agreement pertains to the concession or concessional period given in terms of the concession right or concession area during the contract period – Provision of Arbitration and Conciliation Act 1996 apply: *Ashoka Infraways Ltd. Vs. State of M.P., I.L.R. (2016) M.P. 2013 (DB)*

– Sections 5, 7(5) & 8 – Arbitration Agreement – Held – If arbitration clause is contained in the annexure to the contract document and annexure is specifically mentioned therein, then arbitration agreement exists between the parties – In present case, arbitration clause is present in the annexure which form part of the purchase order itself – In view of the existence of such agreement, suit is not maintainable – Trial Court rightly dismissed the suit directing the appellant to invoke arbitration clause – Appeal dismissed: *Anik Industries Ltd. (M/s.) Vs. DCM Shriram Consolidated Ltd. (M/s.), I.L.R. (2019) M.P. *15*

– Section 7 – See – Arbitration Act, 1940, Section 8: *Pooranchandra Agrawal Vs. Union of India, I.L.R. (2016) M.P. 1289*

– Section 7 & 8 – Held – Arbitration agreement can be arrived between parties even after filing of suit – If agreement satisfies conditions of Section 7, Court is to refer the matter to arbitrator u/S 8 – Suit is not required to be kept pending and same stands disposed off with the order of reference: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P. 2553*

– Section 7 & 9 – Arbitration Agreement – Existence of – Appellant cancelled the contract awarded to Respondent and forfeited the earnest money and was further black listed for three years – Respondent approached the civil Court u/S 9 of the Act, whereby the order passed by Appellant was stayed – Challenge to, on the ground that no contract was executed between parties – Held – In terms of Section 7, even in

absence of duly signed agreement by the parties, agreement can be inferred from other written communications exchanged between them – Though no written agreement was signed between parties but bid of respondent was duly accepted and rate contract award was issued thus appellant itself has treated it to be a concluded contract on the basis of which subsequent communications were made: *M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. Vs. Serco BPO Pvt. Ltd., I.L.R. (2018) M.P. 166*

– Section 7(5) & 8 – Arbitration agreement – Power to refer parties to arbitration where there is an arbitration agreement – The Arbitration clause existing in the general conditions of contract is treated to be a part of the agreement executed between the parties and conditions enumerated in Section 8 of the Act are satisfied then Court is under an obligation to refer the parties to the arbitration in terms of the agreement: *Bright Drugs Industries Ltd. (M/s.) Vs. Punjab Health System Corporation (M/s.), I.L.R. (2017) M.P. 141*

– Section 8 – See – Constitution – Article 227: *GAIL Gas Ltd. Vs. M.P. Agro BRK Energy Foods Ltd., I.L.R. (2016) M.P. 2771*

– Section 8 & 9 – Mandatory Provision – Maintainability of Application – Suit by respondent/plaintiff – Application u/S 8 r/w 9 of the Act of 1996 was filed by applicant/defendant for referring the dispute to arbitration – Application dismissed on the ground of non-filing of original copy or certified copy of agreement alongwith application – Challenge to – Held – Filing of original agreement or a duly certified copy of same is a mandatory requirement for moving an application u/S 8 of the Act of 1996 in a pending suit – Mandatory requirement not complied by applicant before trial Court – Application rightly dismissed – Revision dismissed: *Union of India Vs. M/s. K. Kapoor & P.R. Mahant Khandwa, I.L.R. (2018) M.P. 2027*

– Section 8 & 34 – Requirement & Scope – Held – In a suit, once trial Court accepted the joint application for arbitration, Section 8 comes into play – Once arbitrator is appointed, nothing remains to be decided in the suit – Keeping the suit pending is of no consequence – Trial Court has no jurisdiction to entertain and decide objections u/S 34 of the Act in pending suit – Impugned order set aside – Appeal allowed: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P. 2553*

– Section 8(3) – Arbitration Agreement – Civil Suit – Jurisdiction – Apex Court has held that merely because an arbitration clause exist in the agreement that does not bar the civil suit completely – Even during pendency of civil suit, arbitration proceedings can be commenced by parties: *Union of India Vs. M/s. K. Kapoor & P.R. Mahant Khandwa, I.L.R. (2018) M.P. 2027*

– Section 9 – Impleadment of a Party – Locus – Held – If as per agreement, it can be shown that relief can be claimed against a party, whether or not he is signatory to agreement, he can be treated to be a "necessary party" – Further, interim measure application can be filed against such third party despite the fact that he is not a signatory to agreement – Petition dismissed: *Beyond Malls LLP Vs. Lifestyle International Pvt. Ltd., I.L.R. (2020) M.P. 2650 (DB)*

– Section 9 – Interim measures – Hypothecation of vehicle under a finance agreement between the parties – Agreement includes arbitration clause – Default in payment – Appellant filed application before the Additional District Judge seeking possession of vehicle and security of balance amount as an interim measure – Application was rejected on the ground that there is no intention of appellant to initiate the arbitration proceedings and application has been filed belatedly and hence need for issuing direction u/S 9 is not proved – Held – Since appellant could not establish prima facie case as well as balance of convenience or irreparable injury, application has been rightly rejected – Appeal dismissed: *Shriram Transport Finance Ltd. (M/s.) Vs. Juber Shekh, I.L.R. (2017) M.P. 392*

– Section 9 – Notice – Procedure – Held – Show-cause notices not founded upon any report of government analyst/drug testing laboratory nor contained any proposed action or nature of punishment and thus not in consonance with prescribed procedure for blacklisting – Impugned order set aside – Application u/S 9 is allowed: *Denis Chem Lab Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 196 (DB)*

– Section 9 – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 14: *Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes Vemalayam, I.L.R. (2018) M.P. 2350 (DB)*

– Section 9(1)(e) – Interim Protection – Jurisdiction & Limitation – Held – Commercial Court had jurisdiction to entertain an application seeking stay of an order of blacklisting – Further, Apex Court concluded that as Section 9 deals with applications for interim measures, question of limitation does not arise – Appellant gave justifiable reason in approaching the Court belatedly – Application should not be rejected on ground of delay: *Denis Chem Lab Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 196 (DB)*

– Section 10 & 11 (6) – Appointment of Arbitrator – Jurisdiction of Court – Held – For appointment of Arbitrator, there is complete non-response and non-cooperation by respondent – Even notice issue by this Court and published in newspaper also remained unresponded – Respondents thus treated as served – There exist a dispute which needs to be resolved by an Arbitrator – In such exceptional case, this Court can appoint an Arbitrator to resolve the dispute – Arbitrator appointed: *S.K. Construction Co. (M/s.) Vs. M/s. Topworth Toolways (Satna), I.L.R. (2019) M.P. *37*

– Section 11 – Appointment of Arbitrator – Termination of contract by the respondent – Applicant seeking appointment of arbitrator for deciding the dispute – Held – As per Clause 24 and 25 of the agreement, there is a prescribed procedure for settling the dispute and appointment of arbitrator – Applicant was required to approach the competent authority i.e. Chief Executive Officer before filing the present application – Applicant has directly approached this Court without exhausting the procedure laid down in the agreement – Mandatory condition for approaching this Court as provided u/S 11 of the Act has not been complied with – Arbitration cases dismissed: *Agrawal Construction Co. (M/s.) Vs. M.P. Rural Development Authority, I.L.R. (2017) M.P. *45*

– Section 11 and Contract Act (9 of 1872), Section 28 – Appointment of Arbitrator – Arbitral Dispute – Limitation to invoke the Clause of Arbitration – Held – Apex Court concluded that the contract which limits the right of parties to approach the Court, would be void – In view of Section 28 of the Act of 1872, such a stipulation in contractual obligation would not be valid and binding – Arbitrator appointed: *Shakti Traders (M/s) Vs. M.P. State Mining Corporation, I.L.R. (2019) M.P. 1763*

– Sections 11, 14, 15 & 32 – Appointment of substitute arbitrator – Application filed for – Whether maintainable – Appointed arbitrator terminated the proceeding observing that parties are not co-operating – Section 15(2) provides that where the mandate of arbitrator is terminated, a substitute arbitrator shall be appointed – Termination amounts to "withdrawal" and not "refusal" – Accordingly substitute arbitrator is appointed – Application allowed: *Gaurav Chaturvedi Vs. Mr. Girdhar Gopal Bajoria, I.L.R. (2016) M.P. *37*

– Section 11 & 16 and Arbitration and Conciliation (Amendment) Act, 2015, Section 11(6A) – Scope – Limitation – Held – As per Section 11(6A), Court is now only required to examine the existence of arbitration agreement – All other preliminary or threshold issues are left to be decided by Arbitrator u/S 16 – Issue of limitation is a jurisdictional issue and has to be decided by Arbitrator and not by High Court at pre-reference stage u/S 11 of the Act: *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s) Vs. Northern Coal Field Ltd., I.L.R. (2020) M.P. 770 (SC)*

– Sections 11 & 34 – See – Limitation Act, 1963, Section 14: *Commissioner, M.P. Housing Board Vs. M/s. Mohanlal and Company, I.L.R. (2017) M.P. 1 (SC)*

SYNOPSIS : Section 11(6)

1. Limitation **2. Nature of Dispute**

3. Nature of Order/Review

1. Limitation

– Section 11(6) and Limitation Act (36 of 1963), Article 137 – Application for appointment of arbitrator – Preliminary objection that the application is barred by limitation – Work completed on 16.07.2009 – Compensation being levied by letter dated 13.05.2011 – Initially civil suit filed on 02.08.2011 which was dismissed on 02.09.2013 – Held – Present application u/S 11(6) of the 1996 Act filed on 13.04.2015 i.e. within 3 years from 02.09.2013 as per residuary provision contained in Article 137 of the 1963 Act – Application not barred by time as no limitation period is prescribed under the 1996 Act – Objection turned down – Application is maintainable: *Shridhar Dubey Vs. Union of India, I.L.R. (2017) M.P. 401*

– Section 11(6) and Limitation Act (36 of 1963), Article 137 & Section 15(2) – Limitation – Period of Notice – Exclusion – Held – If intervention of court is necessitated then such petition has to be filed within the period of limitation – Since there is no specific period of limitation prescribed for application u/S 11 of the Act of 1996, therefore as per Article 137, period of limitation will be three years from the date right to apply accrues – Limitation does not start from the date of notice but from the date when cause of action arises – Period of notice is to be excluded for computing the period of limitation in terms of Section 15(2) of the Limitation Act, 1963 – In the instant case, date of agreement was 21.12.2010, final payment according to agreement was made in the year 2011, notice for appointment of Arbitrator was issued on 29.05.2013 – Hence, cause of action accrued in the year 2011 and petition was filed before this Court on 20.09.2016, much beyond the period of three years, which is barred by limitation – Dispute cannot be referred to Arbitration – Petition dismissed: *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s.) Vs. Northern Coal Field Ltd., I.L.R. (2018) M.P. 794*

– Section 11(6) & 21 – Appointment of Arbitrator – Held – Section 21 of the Act of 1996 deals with appointment of Arbitrator without intervention of the Court whereas appointment of Arbitrator with the intervention of the Court is contemplated u/S 11(6) of the Act of 1996: *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s.) Vs. Northern Coal Field Ltd., I.L.R. (2018) M.P. 794*

– Section 11(6-A) – Appointment of Arbitrator – Limitation – Cause of Action – Held – Final bill settled on 12.05.2014 – Aggrieved by less payment, applicant made representation whereby respondent directed to submit details in proper format and finally rejected the same on 17.07.2018 – This fresh rejection revives the cause of action, thus period of limitation is not a hurdle for applicant – Cause of action is to be constituted by whole bundle of essential facts – Arbitrator appointed – Application allowed: *Zam Zam Refrigeration & Air Conditioning (M/s.) Vs. Chief Engineer (Electrical) BSNL, Bhopal, I.L.R. (2019) M.P. 1294*

2. Nature of Dispute

– Section 11(6) – Application for appointment of arbitrator – Dispute – Whether petitioner liable to pay the compensation despite completing the contractual work within the extended terms – Preliminary objection that the application u/S 11(6) of the 1996 Act is not maintainable as the issue relates to the quantum of compensation and it is not arbitrable being "excepted" vide clause 25 of the contract – Clause 2, 5 and 25 of the contract – Held – It is not the quantum but the very authority to levy the compensation is disputed so it cannot be said that the dispute falls under the "excepted category" – Application u/S 11(6) of the 1996 Act allowed – Sole Arbitrator appointed: *Shridhar Dubey Vs. Union of India, I.L.R. (2017) M.P. 401*

– Section 11(6) – Appointment of an arbitrator – Since petitioner has not received the amount in full and final settlement of the dues – He sent a notice for appointment of an Arbitrator but the same was not done by the respondent – Held – The question whether the payment received by the petitioner is towards full and final settlement which binds and precludes him from making any other claim for damages arising out of the breach of contract, is a matter which is within the realm of Arbitrator – Petition allowed: *K.N. Singh Infratech Pvt. Ltd. (M/s.) Vs. M/s. Montecarlo Construction Ltd., I.L.R. (2016) M.P. 551*

– Section 11(6) – Appointment of Arbitrator – Since the applicant was not getting expected quantity of stone, prayer was made to reduce the quantity – It was also prayed that Geological Surveyor be appointed to determine the availability of stone – Lastly, he prayed that Arbitrator be appointed – Held – Clause 10 of the agreement makes it clear that the dispute relating to the terms of the contract can only be referred for arbitration – Clause 6.5 of the agreement provides that in no circumstances total quantity to be excavated can be reduced – Hence the grievance can not be treated as dispute as per clause 10 of the agreement – Thus, in absence of dispute, question for appointment of arbitrator does not arise – Application is dismissed: *Shree Agencies Pvt. Ltd. Vs. M.P. State Mining Corporation, I.L.R. (2016) M.P. 1467*

– Section 11(6) – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Sections 2(1)(d), 7-A (1) & (2): *Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346 (FB)*

3. Nature of Order/Review

– Section 11(6) – Order and Review – Held – Functions performed by the Chief Justice or his designate u/S 11 is a judicial function and thus orders passed must be treated as a judicial orders – Orders passed u/S 11(6) of the Act is an outcome of

a judicial function and therefore it cannot be said that said order is administrative in nature and the same is not passed by a Court – Further held – The expression 'review' is used in two distinct senses namely, (i) a procedural review which is either inherent or implied in a Court or Tribunal for the purpose of setting aside a palpable erroneous order passed under a misapprehension and (ii) a review on merits when the error sought to be corrected is one of law and is apparent on face of the record – Review on merits can be sought for only when there exist an enabling provision expressly or impliedly – In cases, where power of procedural review is invoked, court cannot enter into merits of the order passed – In the instant case, the error pointed out are not related to procedural part but are related to merits of the case and since no express or implied provision for review exists under the Act of 1996, the present review petition cannot be entertained – Review petition dismissed: *Dinesh Kumar Agrawal Vs. Vyas Kumar Agrawal, I.L.R. (2018) M.P. 510*

• **– Section 12(5)** – Departmental Arbitrator – Held – In view of Section 12(5) of the Act, the departmental arbitrators now cannot be appointed as Arbitrators: *Cobra CIPL Vs. Chief Project Manager, I.L.R. (2019) M.P. 926*

– Section 15 – Appointment of the substitute arbitrator – On the withdrawal of the named arbitrator and in terms of the arbitration clause contained in MOU, which are in the nature of the arbitration agreement, the substitute arbitrator is required to be appointed for resolving the dispute between the parties – The substitute Arbitrator appointed by the Court for deciding the dispute between the parties: *Surya Kumari Mehta (Smt.) Vs. Shri Rajendra Singh Mehta Through LRs., I.L.R. (2016) M.P. 1474*

– Section 16 – Doctrine of "Kompetenz-Kompetenz" – Held – This doctrine is intended to minimize judicial intervention, so that arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties: *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s) Vs. Northern Coal Field Ltd., I.L.R. (2020) M.P. 770 (SC)*

– Section 16 – Term of Arbitration Clause – Effect of termination of contract – Held – As per legislative mandate ingrained in section 16 of the Act, Arbitration clause would not cease to exist on termination of contract or for the reason that agreement has outlived its life: *Grand Ridge Homes (M/s.) Vs. Maheshwari Homes & Developers, I.L.R. (2017) M.P. 2251*

– Section 16 & 34 – Amendment – Limitation – Plea of Jurisdiction – High Court referred a works contract dispute to Arbitrator – Award passed in favour of appellant – Respondent State approached the trial Court u/S 34 of the Act of 1996 – After 3 years, State sought to amend its objections and the prayer was dismissed –

State filed a Writ Petition which was allowed – Challenge to – Held – Amendment being beyond limitation is not to be allowed – Prayer of amendment not pressed by State hence present appeal is rendered infructuous – Impugned order set aside – Further held – There is no bar to plea of jurisdiction being raised by way of objection u/S 34 of the Act even if no such objection is raised initially u/S 16 before the Arbitrator – Both stages are independent – Matter may be taken up by trial Court for consideration of objections u/S 34 of the Act of 1996 even without a formal pleading, because it is purely a legal plea – Appeal disposed of: *Lion Engineering Consultants (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. 1342 (SC)*

– Section 28(3) – Held – The Arbitrator is bound by the terms of agreement – Therefore, an award rendered by such an arbitrator cannot be sustained if an arbitrator has traveled beyond the terms of the agreement to hold that there was an oral agreement prior to placing of advance purchase order, which was accepted by the respondents: *Bharat Sanchar Nigam Ltd. Vs. M/s. Optel Telecommunication Ltd., I.L.R. (2018) M.P. 2004*

– Sections 31(3), (7), 34 & 37 – Award passed by the Arbitrator assailed on the ground that the same has been passed in contravention of Clause 64(5) of the agreement – Held – Clause 16(3) and 64(5) of the agreement specifically provides that the parties had agreed that no interest shall be payable for whole and any part of the money – Thus, Arbitrator cannot award interest: *Union of India Vs. M/s. Ravi Builders and Rajendra Agrawal & Associates, I.L.R. (2016) M.P. 1175*

– Sections 31(3), (7), 34 & 37 – New Plea – Raising of new plea in respect of bar contained in Clause 64(5) of the agreement – Objection with regard to grant of interest being a pure question of law can be raised at this stage – Award passed by the Arbitrator with regard to interest is set-aside – Appeal is partly allowed: *Union of India Vs. M/s. Ravi Builders and Rajendra Agrawal & Associates, I.L.R. (2016) M.P. 1175*

– Section 34 – In the facts of present case, the arbitrator on the basis of meticulous appreciation of the material evidence on record has assigned reasons and rejected the claims of the appellant and thus it cannot be said that the award has been passed in contravention of Section 31 of the Act – Trial Court has rightly rejected the objections of the appellant to the award – Appeal dismissed: *K.T. Construction (I) Ltd. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2025 (DB)*

– Section 34 – Interference in arbitral award – Held – In absence of any allegation that the award passed by the arbitrator is against the public policy, liquidated damages imposed in terms of the agreement entered into between the parties could not have been interfered with by the arbitral tribunal even in the claim is sought

through the statutory arbitration – Judgment of Supreme Court in the case of (2003) 5 SCC 705 (Oil and Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.) relied upon: *The General Manager Vs. M/s. Raisingh & Company, I.L.R. (2018) M.P. 2018 (DB)*

– Section 34 – Objections – Competent Forum – Objections u/S 34 of the Act were required to be registered separately and decided by the competent Court – Trial Court committed error in deciding objection u/S 34 in the pending suit: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P.2553*

– Section 34 – See – Constitution – Article 14: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

– Section 34 – Setting aside of Arbitral Award – The terms of the contract stand crystallized with the issuance of Advance Purchase Order and acceptance of the same – The Arbitral Tribunal has to take into account the terms of the contract while deciding and making an award – The terms of the contract are sacrosanct and an award cannot be rendered against the terms of the contract – If the terms of the contract have been interpreted then the decision of the Arbitrator would not be interfered with in proceedings u/S 34 of the Act: *Bharat Sanchar Nigam Ltd. Vs. M/s. Optel Telecommunication Ltd., I.L.R. (2018) M.P. 2004*

– Section 34 – Setting aside of Arbitral award – When not permissible – Held – An award passed by the arbitrator which is not contrary to the fundamental policy of Indian Law, Justice or Morality, contrary to the statute or patent illegality does not warrant interference of the Trial Court exercising powers under Section 34 of the Act: *K.T. Construction (I) Ltd. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2025 (DB)*

– Section 34 – Setting aside of award – Award can be set aside (i) if it is contrary to fundamental policy, (ii) against interest of India; justice or morality, (iii) if it is patently illegal arbitrary: *M.P. State Civil Supplies Corporation Ltd. Vs. M/s. K.D. Transport, I.L.R. (2016) M.P. 556*

– Section 34 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 – Agreement – Arbitration clause – State Govt. or a public undertaking a party – Whether in such a case the Forum under the 1996 Act will have the jurisdiction – Held – No, as the consent of parties cannot confer jurisdiction nor an estoppel against statute as the jurisdiction is conferred on Arbitration Tribunal under the 1983 Act: *State of M.P. Vs. M/s. Lion Engineering Consultants, I.L.R. (2016) M.P. 735*

– Section 34 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 – Works contract – Agreement – Arbitration clause – Award passed by

arbitrator – Application seeking amendment in the objection dismissed – State Govt. a party – Whether having travelled a substantial distance in an arbitration proceedings under the 1996 Act, one of the party can turn around at a later stage to question the jurisdiction of forum over the subject matter – Held – When the objection is in respect of jurisdiction over subject matter it is immaterial at what stage it is taken because it strikes at the very jurisdiction of the court or the forum exercising the jurisdiction – Amendment application allowed – Petition allowed: *State of M.P. Vs. M/s. Lion Engineering Consultants, I.L.R. (2016) M.P. 735*

– Section 34 & 36 – See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

– Section 34 & 37 – Allegation of bias against arbitrator – Parties by mutual agreement agreed for named arbitrator – In statement of claim and during the course of proceedings before arbitrator no allegation of bias against arbitrator raised – Appellant raised plea of bias while raising objection u/S 34 – Such a course not open to appellant – Objection of bias on the ground that Commissioner has heard the appeal filed by appellant against eviction order – Held – Appeal was heard by the commissioner in his capacity as an appellate authority whereas the arbitration has been conducted in a different capacity as named arbitrator in arbitration clause – Objection of bias cannot be accepted: *Central Paints Co. Pvt. Ltd. Vs. State of M.P., I.L.R. (2018) M.P. 980*

– Section 34 & 85 and Arbitration Act (10 of 1940), Sections 14(2), 17 and 29 – Arbitration clause invoked on 22.06.1992 under the Act of 1940 – Arbitrator was appointed on 26.05.1999 – Arbitrator resigned on 30.01.2001 – New arbitrator appointed on 08.03.2001 – Award passed on 16.02.2002 – Execution of arbitral award under the Act of 1996 – Objection filed by the petitioner u/S 34 of the Act of 1996 regarding maintainability of execution case – Dismissal thereof – Petition against – Held – The arbitration proceedings had commenced under the 1940 Act and parties have agreed to continue under the same Act even after resignation by first arbitrator, the provisions of 1940 Act will be applicable even when the Award is to be executed – Since under the 1940 Act the award, ipso facto is not executable unless made rule of Court under Section 14(2), 17 and 29 of 1940 Act, so execution proceedings under the 1996 Act are dismissed – Respondent is at liberty, if limitation permits, to invoke the provisions of 1940 Act – Petition allowed: *Union of India Vs. K.C. Sharma (M/s.), I.L.R. (2017) M.P. 77*

– Section 34(2)(b)(ii) – Awards – Trial Court set aside the award only on the ground that appellant had no authority to deduct amount without getting the dispute adjudicated – This finding was contrary to clause 9.4 of agreement – Additional District Judge while passing the impugned judgments exceeded its jurisdiction while

dealing with the objections preferred u/s 34 of the Act – Judgments passed by the trial Court suffer from jurisdictional infirmity – Impugned judgments are set aside – Awards passed by the Arbitrator are restored – Appeals allowed: *M.P. State Civil Supplies Corporation Ltd. Vs. M/s. K.D. Transport, I.L.R. (2016) M.P. 556*

– Section 34(3) and Limitation Act (36 of 1963), Section 14 – Applicability – Section 14 of Limitation Act is applicable in proceedings u/S 34(3) of Arbitration and Conciliation Act: *Commissioner, M.P. Housing Board Vs. M/s. Mohanlal and Company, I.L.R. (2017) M.P. 1 (SC)*

– Section 36 – Award – Execution – Held – Award passed by the arbitral tribunal under the provisions of the Act is enforceable under Section 36 in the same manner as if it were a decree of the Court, though Arbitral Tribunal is not a Court, so application for execution cannot be filed before arbitral tribunal: *Magma Fincorp Ltd. Vs. Rajbhan Singh, I.L.R. (2016) M.P. 106*

– Section 36 – Award & Decree – Held – In terms of Section 36 of the Act, award is to be enforced in same manner as if it was a decree of Court – Under the Act of 1996, award is not required to be made the rule of Court: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P. 2553*

– Section 36 – Execution petition – In respect of an award the execution proceeding can not be initiated where the person or property of person is situated against whom decree is sought to be executed, without insisting on to first apply for execution to one Court, merely to obtain transfer – Petition allowed: *Magma Fincorp Ltd. Vs. Rajbhan Singh, I.L.R. (2016) M.P. 106*

– Section 36 – See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

– Section 36 – See – Micro, Small and Medium Enterprises Development Act, 2006, Section 18(1) & (2): *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. *37 (DB)*

– Section 37 – Scope of appeal against the order deciding objection u/S 34 of Act – Award of the arbitrator can be subject matter of challenge u/S 34 of the Act only on the limited ground prescribed therein – Scope of appeal cannot be wider than the scope of considering the objection u/S 34 – Unless a ground u/S 34 is made out appellate power cannot go into the findings of the arbitrator or re-appreciate the evidence: *Central Paints Co. Pvt. Ltd. Vs. State of M.P., I.L.R. (2018) M.P. 980*

– Section 37 and Civil Procedure Code (5 of 1908), Section 96 – First Appeal – Maintainability – Held – Appellant has filed the appeal u/S 37 of the Act of 1996 – Merely because office has registered the same as First Appeal instead of Arbitration Appeal, it cannot be dismissed as not maintainable: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P. 2553*

– Section 45 – Reference to arbitration – Scope of enquiry – Scope of enquiry while referring the matter to arbitration u/S 45 of the Act of 1996 is confined only to the question whether the arbitration agreement is null and void, inoperative or incapable of being performed but not the legality and validity of the substantive contract: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

– Section 45 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Arbitration – Rejection of plaint – Facts – Agreement-I executed between appellant and an American Company – Agreement-II executed between appellant, respondent (Indian Company) and American Company – Dispute – Arbitration clause – Respondent making a request for arbitration – Appellant filing civil suit – Application under Order 7 Rule 11 of C.P.C. r/w Section 45 of the Act of 1996 by respondent – Trial Court dismissed the suit and subsequently appeal was also dismissed by High Court – Held – Trial Court allowed the application by recording the agreement as legal and proper and capable of being performed but it did not pass any consequential order as required u/S 45 of the Act of 1996 by referring the parties to arbitration – So with the above modification, order of the trial Court is just and proper – Appeal dismissed: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015

– Section 11(6A) – See – Arbitration and Conciliation Act, 1996, Section 11 & 16: *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s) Vs. Northern Coal Field Ltd., I.L.R. (2020) M.P. 770 (SC)*

ARCHITECTS ACT (20 OF 1972)

– Section 3 – See – All India Council for Technical Education Act, 1987, Section 2(g): *All India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture, I.L.R. (2020) M.P. 562 (SC)*

– Sections 3, 17, 18, 19, 44 & 45 and All India Council for Technical Education Act (52 of 1987), Sections 3, 22 & 23 – Council of Architecture (COA) & All India Council of Technical Education (AICTE) – Architecture Education –

Recognition of Degrees & Diplomas – Applicability – Held – So far as recognition of degrees and diplomas of architecture education is concerned, Act of 1972 shall prevail and AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in subject of architecture – Norms and Regulations set by COA and other specified authorities under the Act of 1972 would have to be followed by an institution imparting education for degrees and diplomas in architecture – Appeal dismissed: *All India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture, I.L.R. (2020) M.P. 562 (SC)*

ARMS ACT (54 OF 1959)

– Section 13 – Transfer of weapon licence – Petitioner's application for grant of licence by transferring the licence of pistol from the name of father to the petitioner has been rejected by non-speaking order – Neither the merits nor the recommendation of District Magistrate and Commissioner were considered – Held – Any authority either judicial, quasi judicial or administrative, are bound to pass speaking order by assigning reasons – Impugned order being non-speaking is set aside – Matter is remanded back to respondent No. 1 & 2 to reconsider as per rules and regulation existing on the date of filing the application – In case of change of rules, petitioner may file fresh application which shall be considered in accordance with new policy: *Rohit Kumar Vs. State of M.P., I.L.R. (2016) M.P. 727*

– Section 13 & 14 – Grant of Arms License – Grounds – Application for grant of license rejected by State – Held – Application of petitioner duly recommended by S.P., Collector and Commissioner – Provisions of Section 13 & 14 of the Act of 1959 not considered by State Government as well as by Single Judge – Impugned order appears to be a non speaking order and thus set aside – Order of State Government is quashed – Matter remanded back to State Government for fresh consideration – Appeal allowed: *Sunil Kumar Jeevtani Vs. State of M.P., I.L.R. (2020) M.P. 2757 (DB)*

– Section 13 & 14(3) – Grant of License – Refusal – Grounds – Held – Recording of reasons in writing for refusal of grant of license is mandatory as per Section 14(3) – While refusing to grant license, it was incumbent upon State to assign proper and real reasons for taking a different view against the favourable recommendation/proposal of SHO and District Magistrate in favour of grant of license to petitioner looking to past incidents with family members of petitioner – Refusing grant of license on omnibus reasons of absence of perceivable threat to life and security of petitioner, cannot suffice mandatory requirements of Section 14(3) – Impugned order quashed – Appeal allowed: *Chhotelal Pachori Vs. State of M.P., I.L.R. (2019) M.P. 730 (DB)*

– **Sections 13(1), (2) (2-A) & 14(1)(a), (b)** – Grant of License – Discretion of Licensing Authority – Held – If conditions prescribed u/S 13(1), (2) and (2-A) are satisfied and there are good grounds for obtaining license, then Arms Act leaves no discretion with licensing authority to decline grant of license, save for reasons detailed in Section 14 which prevails upon Section 13 and empowers the authority to refuse grant of license, if provisions of Section 14(1)(a) and (b) are not satisfied: *Chhotelal Pachori Vs. State of M.P., I.L.R. (2019) M.P. 730 (DB)*

– Section 14 and Penal Code (45 of 1860), Section 96 to 106 – Word 'Unfit' – Held – Word 'unfit' be interpreted to mean that applicant for some exceptional and strong reasons has disqualified himself from holding a license i.e. if he is a hardened criminal or is involved in heinous crimes, otherwise all applications for license for non-prohibited arms must be allowed – Such interpretation is also in consonance with Sections 96 – 106 IPC which gives right of self defence: *Gajendra Singh Vs. State of M.P., I.L.R. (2020) M.P. 406*

– Section 17(3)(a) – Cancellation of Arms License – Pending Criminal Cases – Held – Use or employment of licensed weapon in crime might be a relevant factor in deciding revocation or suspension of arms license – In pending two criminal cases against petitioner, which are petty offences, no allegation or evidence that he used his gun/revolver for commission of crime – Except two cases, petitioner has been exonerated from other four criminal cases – Impugned orders quashed – Petition allowed: *Gajendra Singh Vs. State of M.P., I.L.R. (2020) M.P. 406*

– Section 17(3)(a) and Constitution – Article 14 – Cancellation of Arms License – Held – After obtaining license, petitioner's conduct was not as such to cause threat to peace and safety of public – Impugned order of cancellation of arms license is also in violation of Article 14 of Constitution: *Gajendra Singh Vs. State of M.P., I.L.R. (2020) M.P. 406*

– Section 17(3)(b) – Arms License – Revocation – Grounds – Held – On date of passing impugned order, the criminal case due to which revocation was proposed was already decided acquitting the petitioner – No reason before Licensing Authority to record satisfaction for revocation of license merely due to registration of a criminal case – Nothing on record to show that public safety affecting public tranquility is in peril or going to be affected showing an act of petitioner affecting public at large or community – In said case, licensed gun was not even seized – Power exercised by Licensing Authority and Appellate Authority is without application of mind and arbitrary – Impugned orders set aside – Petition allowed: *Abdul Saleem Vs. State of M.P., I.L.R. (2019) M.P. 838*

– Section 17(3)(b) – Arms License – Revocation – Grounds & Factors/ Parameters for Consideration – Discussed and enumerated: *Abdul Saleem Vs. State of M.P., I.L.R. (2019) M.P. 838*

– Section 17(3)(b) – See – Constitution – Article 226: *Abdul Saleem Vs. State of M.P., I.L.R. (2019) M.P. 838*

– Section 25 & 27 – Ground – Held – Police recovered unlicensed country made pistol and cartridges from possession of applicant – Sufficient to implicate him for offence u/S 25 & 27 of the Act of 1959: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Section 25(1) & 27 – See – Penal Code, 1860, Section 307: *Kishori Vs. State of M.P., I.L.R. (2019) M.P. 1757*

– Section 25(1)(a) – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8/20(b)(ii)(C), 42 & 50: *Dinesh Singh @ Dinnu @ Rajesh Singh Vs. State of M.P., I.L.R. (2018) M.P. 2486 (DB)*

– Section 25(1)(a) – See – Penal Code, 1860, Section 302 & 302/34: *Rajkishore Purohit Vs. State of M.P., I.L.R. (2017) M.P. 2299 (SC)*

– Section 25(1A) & 27 – See – Penal Code, 1860, Section 302 & 341 r/w 34: *Balvir Singh Vs. State of M.P., I.L.R. (2019) M.P. 1200 (SC)*

– Section 25(1)(a) & (b) – See – Penal Code, 1860, Sections 396, 398 & 412: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 25(1B)(a) – See – Criminal Procedure Code, 1973, Section 482: *Laxman Vs. State of M.P., I.L.R. (2017) M.P. *6*

– Section 25(1-B)(a) & 27 – See – Penal Code, 1860, Section 302 & 323: *Deshpal Vs. State of M.P., I.L.R. (2017) M.P. 2717 (DB)*

– Section 25/27 – See – Criminal Procedure Code, 1973, Section 320 & 482: *State of M.P. Vs. Dhruv Gurjar, I.L.R. (2020) M.P. 1 (SC)*

ARMY ACT (45 OF 1950)

– Section 125 – See – Criminal Procedure Code, 1973, Section 475: *Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P., I.L.R. (2017) M.P. 1275*

– Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 – Nature of – Held – Are mandatory and the

effect of non-compliance thereof is that the entire exercise would be vitiated and held to be *null and void*: *Karamjeet Singh Vs. State of M.P., I.L.R. (2017) M.P. 946*

– Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 – Trial of offence – Accused army man – Criminal Court and Court-martial both have concurrent jurisdiction – If the criminal Court is of the opinion that proceedings be instituted before itself, the procedure before proceeding with the trial is that notice as provided u/S 125 & 126 of the Army Act to Commanding Officer is required to be issued – It is a mandatory requirement – Non-compliance of which vitiates the entire exercise and proceedings will be held to be *null and void: Karamjeet Singh Vs. State of M.P., I.L.R. (2017) M.P. 946*

ARMY RULES, 1954

– See – Criminal Procedure Code, 1973, Section 475: *Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P., I.L.R. (2017) M.P. 1275*

AWADESH PRATAP SINGH VISHWAVIDYALAYA ORDINANCE

– Ordinance No. 16(1) – See – Vishwavidyalaya Adhiniyam, M.P., 1973, Section 37: *Shacheendra Kumar Chaturvedi Vs. Awadesh Pratap Singh Vishwavidhyalya, I.L.R. (2016) M.P. 1925*

– Ordinance No. 16(1) & (2) – Cancellation of marksheets – Opportunity of hearing – Notice was issued to petitioner for submitting original marksheets but he took a plea that entire record has washed away in flood – No attempt on the part of petitioner to obtain duplicate marksheet – No more opportunity is required to be given – Principle of Natural Justice cannot be put in straight jacket formula: *Shacheendra Kumar Chaturvedi Vs. Awadesh Pratap Singh Vishwavidhyalya, I.L.R. (2016) M.P. 1925*

AWARD OF DEALERSHIP OF LPG

– Judicial review – Award of dealership – Administrative decision – It is a contract having commercial orientation – However, the decision making process is open for judicial review: *Vijay Pratap Singh Parihar Vs. Union of India, I.L.R. (2016) M.P. 983*

B

BACKWARD CLASSES AND MINORITY WELFARE DEPARTMENT (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 2013

– Rule 6(1)(b) & (c) – Recruitment – Secretary – Held – Post of Secretary, Minority Commission which is Class I gazetted post, is to be filled up 100% by way of promotion from post of feeder cadre and if such candidate is not available then by way of transfer of persons who hold in substantive capacity such posts in such services – Respondent No. 4, an Assistant Veterinary Surgeon, Class II appointed as Secretary – It is not a case of promotion – Minority Commission is a public office created by Statute on which a person possessing eligibility as prescribed in Rules can be appointed and posted – In present case, neither respondent No. 4 possess the eligibility nor the procedure followed is just – Appointment set aside – Petition allowed: *Arif Aquil Vs. State of M.P., I.L.R. (2019) M.P. *2*

BANK OF INDIA OFFICER EMPLOYEES (DISCIPLINE & APPEAL) REGULATIONS, 1976

– Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 – Departmental Enquiry – Admission – Charges were admitted – No need to held any enquiry into charges – Charges stood proved on admission: *Surjeet Singh Bhamra Vs. Bank of India, I.L.R. (2016) M.P. 2639 (SC)*

– Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 – Departmental Enquiry – Legality – Bank issued memo on 08.09.2000 stating irregularities committed by the employee, which was replied by the employee on 18.10.2000 – Voluntary Retirement Scheme floated on 01.11.2000 stipulating that application can be filed before 14.12.2000, and cut off date for the Bank to complete formalities was 30.12.2000 – Employee applied therefor on 16.11.2000 – Served with the charge sheet on 02.03.2001 and admitted charges on 13.03.2001 – He was punished on 20.03.2001 – Voluntary retirement was accepted vide order dated 19.06.2001 – Held – Punishment was legal – Reasons – On 02.03.2001 appellant was employee of the bank and he could be subjected to departmental enquiry as per rule – He was served with the memo prior to floating of the Scheme – According to the Scheme, the application for voluntary retirement could be considered only after conclusion of disciplinary proceedings – The relationship of employee and employer continued till 19.06.2001: *Surjeet Singh Bhamra Vs. Bank of India, I.L.R. (2016) M.P. 2639 (SC)*

– Regulation 4(1) & Bank of India Voluntary Retirement Scheme 2000 – Interpretation of Statutes – Deeming fiction – Non-compliance of any act by Authority – Benefit thereof – No such benefit can accrue in favour of an employee automatically by fiction – Scheme must contain a clause for conferral of such benefit: *Surjeet Singh Bhamra Vs. Bank of India, I.L.R. (2016) M.P. 2639 (SC)*

– Regulation 4(1) and Bank of India Voluntary Retirement Scheme 2000 – Nature of Scheme – Employee has to apply for voluntary retirement within stipulated time and also the Bank is required to decide the same within stipulated time – The employee applied within time, but the bank decided it beyond the time fixed under the Scheme – Held – Filing an application by employee within particular date is mandatory, whereas it is directory for the Bank to pass order on the application by a specific date and complete all the formalities: *Surjeet Singh Bhamra Vs. Bank of India, I.L.R. (2016) M.P. 2639 (SC)*

BENAMI TRANSACTIONS (PROHIBITION) ACT (45 OF 1988)

– Section 2(a) and Contract Act (9 of 1872), Section 23 – Held – If an agreement to sale suffers from vice of benami transaction, the same falls in category of contracts, forbidden u/S 23 of Contract Act: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 2(a) & 4 – See – Specific Relief Act, 1963, Section 34: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Sections 2(a), 2(c) & 4 – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Sita Bai (Smt.) Vs. Smt. Sadda Bai, I.L.R. (2018) M.P. 193*

– Section 3 & 4 – Benami Transaction – Onus of Proof – Held – Apex Court concluded that the onus of establishing that a transaction is benami is upon one who assert it: *Fair Communication & Consultants (M/s) Vs. Surendra Kerdile, I.L.R. (2020) M.P. 1233 (SC)*

– Section 3 & 4 – Held – Appellant during his cross-examination admitted a document (although a photocopy), showing real consideration amount, thus once it is admitted, respondent/plaintiff seeking consequential amendment was purely formal – Further, suit is not based on any plea involving examination of a *benami* transaction – Plaintiff not asserting any claim as benami owner nor urging a defense that any property or amount claimed by him is a benami transaction – Plea of plaintiff regarding real consideration amount is not barred – Appellants did not prove that transaction *(to which they were not parties)* was *benami* – Appeal dismissed: *Fair Communication & Consultants (M/s) Vs. Surendra Kerdile, I.L.R. (2020) M.P. 1233 (SC)*

BHARAT PETROLEUM LIMITED CONDUCT, DISCIPLINE AND APPEAL RULES FOR MANAGEMENT STAFF, 1976

– Clause 6 & 10, Part III, Schedule I, Part III-A, Part III-F-(1) & (23)(2)(e) & (f) – Dismissal & Discharge – Disciplinary Authority & Competent Authority – Held – Term Competent Authority will include a disciplinary authority – Under Part III-F(1), disciplinary authority has been described to include an authority as specified in Schedule I which includes both Functional Manager and Functional Director – Functional General Manager was disciplinary authority for punishment lesser than dismissal and Functional Director was disciplinary authority for punishment of dismissal – DGM was fully competent to issue charge-sheet – Order of discharge calls no interference – Direction by High Court to issue fresh charge-sheet is set aside – Appeal allowed: *Bharat Petroleum Corp. Ltd. Vs. Anil Padegaonkar, I.L.R. (2020) M.P. 1789 (SC)*

– Clause 6 & 10, Part III, Schedule I, Part III-B(2)(e) & (f) – Discharge & Dismissal – Held – Punishment of "discharge" from service imposed under Part III-B(2)(e) – No order of "dismissal" imposed under Part III-B(2)(f) – High Court erred in opining that employee has been "dismissed" from service and came to conclude that charge-sheet was issued by incompetent authority: *Bharat Petroleum Corp. Ltd. Vs. Anil Padegaonkar, I.L.R. (2020) M.P. 1789 (SC)*

BHOPAL DEVELOPMENT PLAN, 2005

– Chapter 3 – See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 19: *Munawwar Ali Vs. Union of India, I.L.R. (2018) M.P. 449 (DB)*

BHUMI VIKAS RULES, M.P., 1984

– Rule 49 – See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973: *M.P. Housing & Infrastructure Development Board Vs. Vijay Bodana, I.L.R. (2020) M.P. 1522 (SC)*

– Rule 57 – Leaving of open spaces in premises – The open space, in terms of Rule 57 of the Madhya Pradesh Bhumi Vikas Rules, 1984 is required within the plot of an owner so as to provide ventilation and lighting and that in terms of Appendix-L, part of such open space, 4.5 meter can be used for parking but 3.6 meter around the building is to be kept free: *Satish Nayak Vs. State of M.P., I.L.R. (2018) M.P. 1895 (DB)*

– Rule 81 – Off street parking space – The requirement of off-street parking space in terms of Rule 81 of the 1984 Rules is not the same as open spaces contemplated in Rule 57 of the said Rules – Such aspect is clear from the reading of Appendix -L wherein the off-street parking space is in addition to the open spaces in terms of Rule 57 of the 1984 Rules: *Satish Nayak Vs. State of M.P., I.L.R. (2018) M.P. 1895 (DB)*

BHUMI VIKAS RULES, M.P., 2012

– Rule 12 – See – Municipal (Compounding of Offence of Construction of Buildings, fees and Conditions) Rules, M.P., 2016, Rule 3 & 5: *Ramesh Verma Vs. Indore Municipal Corporation, I.L.R. (2018) M.P. 1127*

– Rule 25 – Revocation of Building Permission – Held – Once it has come to knowledge of Municipal Corporation that construction has been made in violation of sanctioned map, it can revoke the permission under Rule 25 of the Rules of 2012 – Once building permission is granted, it is incumbent upon builder or owner to make construction in accordance with terms and conditions of permission – Power of revocation rightly exercised – Petition dismissed: *Shailendri Goswami (Smt.) Vs. Indore Municipal Corporation, I.L.R. (2017) M.P. *146*

– Rule 53(iv) – Fuel filling station – For establishing a retail outlet, the land owner has to fulfill the norms of Rule – The owner is fulfilling the condition of Rule 53(iv)(b) – Petition allowed and IDA directed to issue NOC: *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

– Rule 53(iv)(b) – Petroleum outlet can be installed over a residential area, subject to compliance of the Bhoomi Vikas Rules, 2012: *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

– Rule 103 – See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 24 & 74: *Pradeep Hinduja Vs. State of M.P., I.L.R. (2019) M.P. 339 (DB)*

– and Indore Development Plan, 2021 – Group Housing & High Rise Building – Master Plan – Object & Purpose – Held – Master Plan is meant for specific cities and Bhumi Vikas Rules are meant for places/cities/town where no specific master plan is in existence – Master Plan is a specific document whereas Bhumi Vikas Rules are generalized set of rules which are to be adhered to in a given condition – Rules provide for Group Housing with regard to population density but do not provide any rider of population density on High Rise Building and thus as per specifications, High Rise Building will not fall under technical nomenclature prescribed for Group Housing Building: *Pradeep Hinduja Vs. State of M.P., I.L.R. (2019) M.P. 339 (DB)*

BOARD OF SECONDARY EDUCATION (MADHYA PRADESH) REGULATIONS, 1965

– Regulation 119 and Constitution – Article 226 – Revaluation – Petitioner, a student of Higher Secondary School Examination filed application for revaluation of his answer sheet and the same was rejected due to non availability of any such provision in Regulations – Petitioner is short of 1 mark to secure 75% marks to make him eligible to appear in JEE examination – Challenge to – Held – Nowadays competition is very tough where difference of one mark changes the position of student in merit list drastically, he may not get admission in the desired field/subject or in college and because of such wrong valuation, the entire future of a meritorious student may suffer – In every case, Court may not exercise power to call the valuer and increase the marks, but where the mistake is obvious and apparent then Courts can exercise the powers under Article 226 of Constitution – In the present case, petitioner correctly answered the question – Respondent directed to increase 2 marks and re-issue the mark sheet – Petition allowed: *Sharinath Das Gupta Vs. Board of Secondary Education, I.L.R. (2018) M.P. 1420*

BOMBAY PUBLIC TRUSTS ACT (29 OF 1950)

– Section 50(ii) – Term "Trespass"; "Trespasser" – Concept and meaning discussed and explained: *Hemant Kumar Hala (Dr.) @ Sem Vs. Senodical Board of Health Services, I.L.R. (2018) M.P. 2451*

BORDER SECURITY FORCE RULES, 1969

– Rule 20 & 22 – Termination – Overstay of Leave – Held – As no enquiry was conducted before passing the termination order and order of appellate authority is also cryptic, both orders set aside – Liberty reserved to the respondents to serve Charge sheet to the petitioner and conduct enquiry in accordance with law – Petitioner be reinstated with no salary for intervening period: *Kaushlendra Singh Jatav Vs. Union of India, I.L.R. (2017) M.P. 321*

BPL CATEGORY

– Entitlement – Petitioner's name appearing in the BPL ration card issued to her sister-in-law (nanad) – Held – Petitioner's husband is alive and has not deserted her – By no stretch of imagination, status of sister-in-law as per Hindu Law and customs can be considered to be head of the family of petitioner – Family card showing herself in BPL category will not entitle the petitioner for any weighted marks, especially when her husband is alive: *Anjul Kushwaha (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 698*

BUILDING AND OTHER CONSTRUCTION WORKERS' (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT (27 OF 1996)

– Section 1(3) and Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 3 – Applicability – Beneficial legislation – Applicable even to the construction activity commenced before the BOCW and Cess Act came into force, if they are subsequently covered by the provisions of these Acts: *A. Prabhakara Reddy & Co. Vs. State of M.P., I.L.R. (2016) M.P. 2141 (SC)*

– Section 1(3) and Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 3 – Levy of Cess – Registration of workers or due availability of fund – Not condition precedent therefor: *A. Prabhakara Reddy & Co. Vs. State of M.P., I.L.R. (2016) M.P. 2141 (SC)*

– Section 1(3) and Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 3 – Levy of Cess – Work orders issued between December 2002 to March 2003 – Board constituted on 10.04.2003 – Demand raised for levy of Cess w.e.f. 01.04.2003 – Cost of construction bifurcated ignoring the cost of construction incurred before the Cess became leviable by distinguishing it from the cost incurred later, from a date when the Board is available to render services: *A. Prabhakara Reddy & Co. Vs. State of M.P., I.L.R. (2016) M.P. 2141 (SC)*

– Section 2(1)(d) and Factories Act (63 of 1948), Section 2(k) & (m) – Appellant challenging the dismissal of writ petition in which the show cause notice was challenged on the ground that Section 2(1)(d) is not applicable in respect of building or other construction work to which the Factories Act would apply – Held – Since the construction under taken by appellant was not undertaken by the employees of the appellant but by an independent contractor, therefore, the workers engaged in the construction work were not covered under the Factories Act and would be covered under Section 2(1)(d) of the Act – Appeal dismissed: *Vippy Industries Ltd. Vs. Assessing Officer, Under Building and Other Construction Workers' Welfare Cess Act, 1996, I.L.R. (2017) M.P. 789 (DB)*

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT (28 OF 1996)

– Section 3 and Building and Other Construction Workers' Welfare Cess Rules, 1998, Rules 3 & 4 – Levy of Cess – Department issued work orders to the contractors between December 2002 to March 2003 – Welfare Board constituted on 10.04.2003 – Demand of cess raised under the Act – Held – After the Cess Act and Rules came into effect, Board was constituted – Rate of Cess notified – Cess is

leviable on the cost of ongoing construction work: *A. Prabhakara Reddy & Co. Vs. State of M.P., I.L.R. (2016) M.P. 2141 (SC)*

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS RULES, 1998

– Rule 3 & 4 – See – Building and Other Construction Workers' Welfare Cess Act, 1996, Section 3: *A. Prabhakara Reddy & Co. Vs. State of M.P., I.L.R. (2016) M.P. 2141 (SC)*

C

CANTONMENTS ACT (41 OF 2006)

– Section 2(zc) & 2(zt) – "Inhabitant" and "Resident" – Representation of the People Act (43 of 1951), Section 20 - "Ordinarily Resident" – Difference & Scope: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

– Sections 20(2), 20(3) & 45 – Withdrawal of Resignation – Procedure – Petitioner, Vice-President of the Board submitted his resignation on 04.03.2016 which was later withdrawn on 06.04.2016 but even after such withdrawal, in a special meeting held on 07.04.2016, resignation was accepted taking resort to Section 20(3) of the Act of 2006 by conducting voting u/S 45 of the Act – Held – There is no provision in the Act of 2006 which provides a separate procedure for withdrawing the resignation and therefore general principles of withdrawing a notice of resignation are applicable, by simply giving an intimation in writing to that effect – In the instant case, there is no requisition as envisaged u/S 20(3) of the Act of 2006 moved by the members for removal of vice-president – It is clear that before the resignation of the petitioner was accepted by the board, the same was withdrawn by him and this fact was taken note of in the resolution of the special meeting of the Board itself – Thus, at the time of passing of the resolution, notice of resignation stood withdrawn and did not remain in existence – Impugned resolution, accepting the resignation of petitioner is quashed – Petition allowed: *Shekhar Choudhary Vs. Union of India, I.L.R. (2017) M.P. *73*

– Section 27 & 28 and Cantonment Electoral Rules, 2007 – Chapter II, Rule 10(3) – Right to vote – Encroacher – Electoral Rolls – Whether a person living in illegally constructed house as an encroacher within a cantonment area is entitled to vote in an election by inclusion in the Electoral Rolls – Held – As per Section 28 of the Act of 2006 and Rule 10(3) of the Rules of 2007 it is evident that the persons who are living in illegally constructed houses as an encroacher, which are not assigned any house no. will not be entitled for inclusion in the electoral rolls and only persons living in houses with house no. are entitled to vote – Appeals dismissed: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

– Section 28 – Judgment in rem – As the correctness of the decision under review has been affirmed by the Supreme Court in SLP and it is a decision *in rem* and the said election has been treated as *non est* in the eyes of law, so in such a situation giving personal hearing to all candidates or making them party was not necessary – Review petition dismissed: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Section 28 – Right to vote – Whether stay granted by the Supreme Court to occupants of unauthorized or illegal structures creates any right in their favour to be voters – Held – No, as the stay can only protect their occupation of the concerned structure and no legal right enures in any of the occupants of the unauthorized and illegal structures to be a voter: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Section 28 – See – Interpretation of statutes: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Section 28 – Voter list – Elections of Ward No. 1 to 6 were set aside – Order was affirmed in W.A. and SLP – Voter list of ward No. 7 was not under challenge – Questions about what would happen to elections of ward No. 7 – Held – The option is left on the appropriate authority to decide whether to conduct elections only for ward no. 1 to 6 or for all the 7 wards: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Section 28 – Whether a person occupying illegal/unauthorized structure in the cantonment area can claim to have any right to be enrolled in the electoral rolls prepared for the concerned Municipal Constituency – Held – No, as the right to vote or to be enrolled as a voter in the electoral rolls is not a fundamental right but it is a creature of statute and only occupants residing in houses approved or recognized by the Cantonment Board as legal area eligible to be voters: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Sections 34(1)(e), 247 & 248 – Defence land – Encroachments – Removal thereof – Cantonment boards should be vigilant regarding removal of illegally constructed buildings in the cantonment area and should ensure that no further encroachments are made on defence land: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

CANTONMENT ELECTORAL RULES, 2007

– Rule 54 & 55 – See – Constitution – Article 226: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

– Chapter II, Rule 10(3) – See –Cantonments Act, 2006, Section 27 & 28: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

CASTE CERTIFICATE

– High Power Caste Scrutiny Committee – Enquiry – Service of Notice – Held – If Committee sent the notice to be served humdast on petitioner, the said procedure cannot be said to be defective or bad in law – Even by holding that petitioner avoided service of notice and the paper publication was sufficient to hold that he was served by substituted service but as he was not aware of the date of hearing and considering that fact that he may suffer penal consequences, matter remanded back to Committee for adjudication afresh – Impugned order quashed – Petition disposed of: *Jaipal Singh Vs. State of M.P., I.L.R. (2019) M.P. *71*

– High Power Caste Scrutiny Committee – Service of Notice – Violation of Rights – Held – Although it is held that notices were served on petitioner, but still they were bad in law, as the minimum stipulated period/opportunity was not given to petitioner – Rights of petitioner to respond the notices has violated: *Jaipal Singh Vs. State of M.P., I.L.R. (2019) M.P. *71*

– Notifications – Addition & Deletion – Held – It is established law that there cannot be any addition or deletion in Presidential Notification regarding a caste certificate by Court of Law except by Legislature: *Ram Kumar Meena Vs. State of M.P., I.L.R. (2017) M.P. 2099 (DB)*

– Proof – Petitioner appointed as Sub-Inspector, Police in 1992 as a SC candidate – On complaint regarding his caste certificate, matter was referred to Scrutiny Committee whereby vide impugned order, certificate was held to be bogus and forged – Challenge to – Held - "Meena" caste in the State of Madhya Pradesh is not included in Scheduled Tribes category, except who are residing in Shironj Sub-Division of District Vidisha – Petitioner did not produce any credentials like ration card or votor list etc. to substantiate his claim that his forefather use to reside in District Vidisha – He did his High School and graduation from District Hoshangabad – No record with Tehsildar, Shironj regarding issuance of caste certificate to petitioner – No illegality with decision of High Level Scrutiny Committee – Writ appeal dismissed: *Ram Kumar Meena Vs. State of M.P., I.L.R. (2017) M.P. 2099 (DB)*

CEILING ON AGRICULTURAL HOLDINGS ACT, M.P. (20 OF 1960)

– Section 4 – Transfers or Partitions made after the publication of Bill but before commencement of Act – Locus Standi – 14 transactions were declared void transactions – Appeal was filed by purchasers who were claiming through holder –

Holder allowed the finding of fact recorded by Competent Authority against him on the factum of failure of discharge the burden of proof to attain finality – Purchasers cannot be allowed to contend to the contrary – As per Section 4(4) of Act, 1960, transaction becomes rebuttable with regard to transfer or sale as void, only at the instance of transferor/holder of land – Only holder/transferor of land can rebut the transaction and not transferees: *State of M.P. Vs. Jagdish Pandey, I.L.R. (2016) M.P. 799 (DB)*

– Section 4 – Transfers or Partitions made after the publication of Bill but before commencement of Act – 14 sale deeds were executed on one day by holder of land in favour of his employees – Holder did not produce any document to show that he was in grave and urgent need of finance/money for the treatment of his daughter – No documentary evidence was produced to establish that the daughter of holder of land had to undergo such treatment at London and incurred heavy expenses therefor – Passport of daughter also not produced – Finding by Board of Revenue regarding the fact that the holder was badly in need of money for treatment of his daughter at London is not based on any legal and tangible evidence – Petition allowed: *State of M.P. Vs. Jagdish Pandey, I.L.R. (2016) M.P. 799 (DB)*

– Section 5 – Permission of Collector – No prior permission of the Collector was obtained by the holder under Section 5 of the Act – In the light of non-compliance of mandatory provision, the sale ought to be treated as void: *State of M.P. Vs. Jagdish Pandey, I.L.R. (2016) M.P. 799 (DB)*

– Section 41 & 42 – See – Land Revenue Code, M.P., 1959, Sections 50, 51 & 56: *Tukojirao Puar (Deceased) Through L.Rs. Shrimant Gayatri Raje Puar Vs. The Board of Revenue, I.L.R. (2020) M.P. 675*

– Sections 41, 42 & 46 – Civil Suit – Maintainability – Held – Order passed by the Competent Authority declaring the land a surplus land is subject to appeal and further revision as provided by the Act of 1960 – As per section 46, there shall be a complete bar against maintainability of suit challenging the order passed by the Competent Authority – Impugned Judgment passed by High Court quashing the order of the competent authority, is quashed – Appeal allowed: *State of M.P. Vs. Dungaji (D) By LRs., I.L.R. (2019) M.P. 2424 (SC)*

CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

– Section 37-A(4) & (21) – See – Service Law: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

CENTRAL EXCISE ACT (1 OF 1944)

– Section 35-C – See – Civil Procedure Code, 1908, Order 41 Rule 17(1), Explanation: *Quality Agencies (M/s.) Vs. The Commissioner, Customs & Central Excise, I.L.R. (2020) M.P. 204 (DB)*

– Section 35(G)(2) and Cenvat Credit Rules, 2004, Rule 12 – Claim of Credit – Registration – Appellant department held that as respondent company was got registered on 17.10.2008 and was not registered during the period when construction service was received and bills were raised, company is not eligible for Cenvat Credit of tax paid on service rendered prior to the date of registration – Company filed an appeal before the Tribunal whereby the same was allowed – Challenge to – Held – Tribunal was justified in holding that registration with the department is not a pre-requisite for claiming the credit – No substantial question of law arises in the instant appeal for interference – Appeal dismissed: *Commissioner, Customs, Central Excise & Service Tax, Indore Vs. All Cargo Global Logistics, Pithampur, I.L.R. (2018) M.P. *16 (DB)*

CENTRAL GOODS AND SERVICES TAX ACT (12 OF 2017)

– Sections 2(17), 2(31), 2(75) & 67(2) – Definition – Word "Thing" – Held – As per definition and interpretation, cash/money is included in the word "thing" – Cash can be seized by the authorities u/S 67(2) of the Act: *Kanishka Matta (Smt.) Vs. Union of India, I.L.R. (2020) M.P. 2116 (DB)*

– Section 67(2) – Release of Seized Cash – Held – Authorities are at stage of investigation and evidence is being collected, unless and until matter is finally adjudicated, question of releasing the seized cash does not arise – Petition dismissed: *Kanishka Matta (Smt.) Vs. Union of India, I.L.R. (2020) M.P. 2116 (DB)*

– Section 67(2) – Seizure of Cash – Confessional Statements – Effect – Held – Apex Court concluded that "confessional statements" made before Custom Officer though retracted is an admission and binding since Custom Officers are not Police Officers: *Kanishka Matta (Smt.) Vs. Union of India, I.L.R. (2020) M.P. 2116 (DB)*

CENTRAL GOVERNMENT NOTIFICATION, 2001

– See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 2(vii-a) & 36(A)(4): *Jitendra Vs. State of M.P., I.L.R. (2019) M.P. 2121*

CENTRAL MOTOR VEHICLES RULES, 1989

– Rule 56 – See – Motor Vehicles Act, 1988, Sections 2(30), 50(2) & 166: *Savitri Devi Tiwari (Smt.) Vs. Abdul Jabbar, I.L.R. (2017) M.P. *42*

CENTRAL RESERVE POLICE FORCE ACT (66 OF 1949)

– Section 11(1) and Central Reserve Police Force Rules, 1955, Rule 27 – Exercising authority u/S 11(1), petitioner dismissed from service for voluntarily absenting from duty for 7 days – Section 11 does not permit Commandant to inflict major penalty of dismissal from service – Impugned order quashed: *Ex. Sep/Dvr. No. 941352587 Santosh Kumar Vs. Union of India, I.L.R. (2018) M.P. 1916*

CENTRAL RESERVE POLICE FORCE RULES, 1955

– Rule 27 – See – Central Reserve Police Force Act, 1949, Section 11(1): *Ex. Sep/Dvr. No. 941352587 Santosh Kumar Vs. Union of India, I.L.R. (2018) M.P. 1916*

CENVAT CREDIT RULES, 2004

– Rule 12 – See – Central Excise Act, 1944, Section 35(G)(2): *Commissioner, Customs, Central Excise & Service Tax, Indore Vs. All Cargo Global Logistics, Pithampur, I.L.R. (2018) M.P. *16 (DB)*

CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) RULES, 2004

– Rule 3 – See – Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Sections 3, 4, 6 & 21: *Restaurant & Lounge Vyapari Association Vs. State of M.P., I.L.R. (2016) M.P. *14*

CIRCULAR OF GOVERNMENT OF INDIA FOR TRANSFER OF FEMALE EMPLOYEES IN PUBLIC SECTOR BANK

– Clause 20 – See – Service Law: *Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank, I.L.R. (2019) M.P. 379*

CIVIL COURTS ACT, M.P. (19 OF 1958)

– Sections 2 (1), 3, 7, 15(2)(3) – See – Public Trusts Act, M.P., 1951, Section 2: *Jai Prakash Agrawal Vs. Anand Agrawal, I.L.R. (2016) M.P. 2170*

CIVIL COURT RULES, M.P., 1961

– Rule 8 – See – Constitution – Article 343 & 345: *Vinod Devi (Smt.) Vs. Smt. Saroj Devi Gupta, I.L.R. (2018) M.P. 1164*

– Rule 186 – See – Civil Procedure Code, 1908, Section 47, Order 21 Rule 17, 23(2): *M.P. Power Generation Co. Vs. Ansaldo Energic, I.L.R. (2016) M.P. 1055*

CIVIL PRACTICE

– Abatement – Held – Abatement is automatically by operation of law but the Court has to take note of abatement and record the closure of the case as having abated: *Kishorilal (Dead) Through L.Rs. Vs. Gopal, I.L.R. (2017) M.P. 2988*

– Abatement – Held – When legal representatives of dead person are not brought on record, then decree passed against dead person is a nullity but in present case, facts are distinguishable – Defendant No. 2 expired during pendency of suit but other defendants who are real brother and mother of deceased did not inform the court about his death – One of the legal representatives of dead person was already on record, it cannot be said that suit had abated or decree has been passed against dead person – When estate of deceased is substantially represented by one of the legal representatives, suit cannot be dismissed as having abated: *Bhikam Singh Vs. Ranveer Singh, I.L.R. (2019) M.P. 577*

– Adverse Possession – Appellants/plaintiffs filed suit for declaration of title on the basis of adverse possession and for permanent injunction – Concurrent findings of fact – Second Appeal – Held – No declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword as per the dictum of Apex Court laid down in Gurudwara Sahib's case reported in (2014) 1 SCC 669 – No Substantial question of law involved – Appeal dismissed: *Ramsanehi Vs. MST. Rajjuwa, I.L.R. (2017) M.P. 899*

– Adverse Possession – Held – Plaintiff cannot claim declaration of title on basis of adverse possession – Plea of adverse possession can be considered only as shield/defence by defendants to protect their possession: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Cause of Action – Maintainability of Suit – Held – It cannot be said that if suit is time barred for declaration of title, then later on, a suit for perpetual injunction

based on possession cannot be filed, as both have separate and distinct cause of action: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Condonation of Delay – Observation on Merits – First Appellate Court dismissed the appeal as time barred but made certain observations on merits – Held – Such observations made are of no consequence because without condoning the delay, appeal could not have been entertained and examined on merits: *State of M.P. Vs. Sureshkumar, I.L.R. (2018) M.P. 2915*

– Consent Decree – Held – Supreme Court has concluded that a consent decree obtained by fraud or mis-representation is *void-ab-initio*: *Purnima Parekh (Smt.) Vs. Ashok Kumar Shrivastava, I.L.R. (2020) M.P. 332*

– Cross Objection – Held – Without filing a cross objection, even an issue or any finding decided against the respondents can be assailed before Appellate Court at the time of final hearing: *Kailashchandra (Dr.) Vs. Damodar (Deceased) Through LRs., I.L.R. (2019) M.P. 2327*

– Jurisdiction – Held – It is duty of Court to find out whether appeal filed is within jurisdiction or not and such exercise has to be done on very first day when appeal is filed – Once appellate Court was of view that appeal is barred by limitation then it should not have decided the same on merits: *Man Khan Vs. Dr. Keshav Kishore, I.L.R. (2019) M.P. 1854*

– Khasra Entries – Document of title – Held – On strength of Khasra entries of certain years, State cannot claim title over disputed land – Entry in revenue records is not a document of title – Revenue Authorities cannot decide a question of title: *State of M.P. Vs. Smt. Betibai (Dead) Through Her LRs., I.L.R. (2020) M.P. 2826*

– Lease Deed – Accrual of Vested Right – Held – A vested right would accrue only when the contract is concluded – Unless and until the lease deed is registered, no vested right accrued in favour of petitioner: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Limitation – Held – There is no evidence to prove the fact that in 1983, transfer of land by State Government to Trust, which was taken place on paper, was in the knowledge of the Appellant/plaintiff – Trial Court rightly held that, suit is not barred by time: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

– Limitation – Notice – Held – Full Bench concluded that a period of 180 days from date of detection of illegality, impropriety and/or irregularity of order/ proceedings committed by Revenue Authority subordinate to Revisional Authority would be a reasonable period for exercise of *Suo Motu* powers despite involvement of government land or public interest in cases involving irreparable loss – NOC issued to plaintiff by Nazul Department in 1992 which would be deemed to have been issued after verification and after a lapse of 4 years notice was issued to plaintiff – Notice is certainly beyond limitation: *State of M.P. Vs. Smt. Betibai (Dead) Through Her LRs., I.L.R. (2020) M.P. 2826*

– Litigant & Counsel – Conduct – Held – This Court in certain cases has concluded that the litigant even after engaging the Counsel cannot be permitted to sleep over his duty – He should be vigilant and contact his counsel in order to gather knowledge regarding progress of litigation – However this principle cannot be applied in present case as no fresh notice was issued by Court on applications filed by plaintiff: *Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies, I.L.R. (2017) M.P. 3015*

– Non Production of Documents – Adverse Inference – Held – If relevant documents which according to parties are in existence but nor produced before Court, then adverse inference has to be drawn against the said party: *Rameswar Dubey Vs. Mahesh Chand Gupta (Dead) through L.Rs., I.L.R. (2019) M.P. 1094*

– Old Documents – Credibility – Held – Original documents which are 30 years old could not be disbelieved and could be presumed to be true and correct under the provisions of Evidence Act: *Kamla Bai Vs. State of M.P., I.L.R. (2018) M.P. 2186*

– Partition – Held – Partition of self acquired property by family settlement by father is not prohibited: *Sanjay Rai Vs. Govind Rao, I.L.R. (2019) M.P. 1461*

– Pleading & Evidence – Held – Any admission in pleading by any party is binding and is an evidence against the party who has pleaded – Such admission cannot be considered as a piece of evidence against other party: *Sanjay Rai Vs. Govind Rao, I.L.R. (2019) M.P. 1461*

– Pleadings and Evidence – Suit of declaration of title and perpetual injunction – Held – It is well established that evidence filed by any party beyond limits of its pleadings is not considerable in civil cases – Evidence has to be tailored strictly according to pleadings and cannot be a probing adventure in dark, putting the opposite party into surprise – In present case, in respect of the land relating to suit house, plaintiff pleaded that an encroachment proceedings were initiated by government and she and her husband was fined whereas she deposed in evidence

that land was allotted to her by Panchayat, which is totally contrary to her own pleadings – No documentary evidence produced in respect of such pleading and evidence – Ownership and title of the suit house not proved – Appeal dismissed: *Kamla Bai Vs. State of M.P., I.L.R. (2018) M.P. 2186*

– Pleadings – Contradictions – Effect – Held – Ordinarily, party cannot go against its pleading and statement but when same are contrary to earlier findings of the Court and are binding on both parties, same cannot be ignored merely on wrong pleading and supporting statement – Thus when party otherwise is entitled to get the relief, cannot be deprived because of wrong pleading or supporting evidence of such plea: *Hardas Vs. Dharmoo (Died) Through LRs. Ramprasad, I.L.R. (2019) M.P. 1454*

– Pleadings & Proof – Burden of Proof – Held – When both the parties (plaintiff & defendant) come before the Court with respective pleadings, they are equally liable to prove their case as per pleadings and if evidence being led by both the parties, question of burden of proof looses its significance: *Kastur Chand Jain (Since Dead) Through LR Ashish Jain Vs. Keshri Singh, I.L.R. (2019) M.P. 2319*

– Principle of Estoppel – Held – Defendants who are beneficiary of the said Will are stopped from challenging the said Will because on the basis of the same Will, one defendant was brought in the suit as legal representative who later entered into compromise with defendants and suit was decreed in their favour – Defendants took indirect advantage of the Will hence, they are estopped to challenge the validity of the Will in the suit: *Jagdish Chandra Gupta Vs. Madanlal, I.L.R. (2019) M.P. 140*

– Proof of Title – Tax Receipts – Held – Receipts regarding payment of taxes like water tax or property tax of housing property or land revenue receipts regarding agricultural lands are not evidence of title as the same are only kept for fiscal purposes: *Kamla Bai Vs. State of M.P., I.L.R. (2018) M.P. 2186*

– Revenue Entry – Effect on Title – Held – In any event, revenue entries are not proof of title but are mere statements for revenue purpose – They cannot confer any right or title on the party relying on them for proving their title: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Stamp Duty – Jurisdiction of Court – Held – Merely because agreement to sell is a registered document, it does not mean that insufficiency of stamp duty cannot be looked into by the Court: *Rajendra Kumar Agrawal Vs. Anil Kumar, I.L.R. (2020) M.P. 2462*

– Title – Adjudication & Jurisdiction – Held – Entry in revenue records is not a document of title and Revenue authorities cannot decide the question of title: *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– Title – Held – Suit land was not given on lease or as a gift – As per evidence, permission was given for lying fencing and further exchange of some part of land with another land of the government, do not confer any right of appellant/ plaintiff on suit land – No document of title produced by appellant to prove the title – Suit for declaration of title rightly dismissed – Appeal dismissed: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

– Title – Proof – Held – Source of title is to be ascertained whether the line of title was clear and perfect – Sale deed being private document is required to be proved as per the Evidence Act – In instant case, nobody related to sale deed was examined – Sale deed not proved – Trial Court rightly dismissed the suit – Appeal dismissed: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

– Title & Possession – Burden of Proof – Held – In a suit for declaration and possession, burden is on the plaintiffs to establish their title to suit properties, they can only succeed on the strength of their own title and not on the weakness of the case of defendants – In instant case, plaintiff has not even produced his title document i.e. patta or lease: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

CIVIL PROCEDURE CODE (5 OF 1908)

– Form 17, Appendix A – See – Specific Relief Act, 1963, Section 16(1)(c) & 20: *Shubh Laxmi Grih Nirman Sahakari Sanstha Maryadit, Indore Vs. Suresh @ Gopal, I.L.R. (2018) M.P. *37*

– Section 2(2) – Decree – Defined – 'Decree' shall be deemed to include the rejection of a plaint but shall not include any order for dismissal for default: *Rameshwar Vs. Govind, I.L.R. (2018) M.P. 1512*

– Section 2(2) – Decree – Essentials thereof and distinction between Preliminary and Final Decree explained – A decree has following essentials – (i) Complete process of adjudication – (ii) Final determination of rights of the parties qua the matter in controversy – (iii) A formal declaration of such conclusive/determined rights so far as that court is concerned – In a preliminary decree certain rights are conclusively determined – Effect of not challenging Preliminary decree – Unless the Preliminary decree is challenged in appeal the rights so determined becomes final and conclusive and the same cannot be questioned in Final decree: *Vijay Sood Vs. Kanak Devi, I.L.R. (2016) M.P. 2054*

– Section 2(2) – See – Swayatta Sahakarita Adhiniyam, M.P., 1999, Section 56 & 57: *Jehangir D. Mehta Vs. The Real Nayak Sakh Sahkari Maryadit, I.L.R. (2019) M.P. *5*

– Section 2(2) & Order 20 Rule 18 – Preliminary & Final Decree – Amendment – Held – At the stage of final decree in appropriate circumstances, preliminary decree can be amended and even another preliminary decree can be passed re-determining the rights and interest of parties: *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

– Section 5 – See – Railway Claims Tribunal Act, 1987, Section 23: *Kapil Vs. Union of India, I.L.R. (2017) M.P. 1891 (DB)*

– Section 7(iv)(c) – Ad Valorem Court Fee – Petitioner/plaintiff filed a suit seeking relief of declaration that sale deed is void and not binding on him on the ground of forgery – Trial Court directed to pay ad valorem court fee – Challenge to – Held – Sale deed dated 07.05.2016 executed by father of petitioner but he is said to have expired in 2010 – Prima Facie, it is established that sale deed is forged – In such peculiar facts, petitioner is not liable to pay ad valorem court fees at present – At the time of passing decree, if Court comes to conclude that plaintiff failed to establish his allegations, ad valorem court fees may be recovered from petitioner – Impugned order set aside – Petition allowed: *Manish Parashar Vs. Pratap, I.L.R. (2018) M.P. *65*

– Section 9 – Concealment of fact – Plaintiff filed civil suit for declaration and permanent injunction – Plaintiff concealed the fact that earlier also he had filed a suit in regard to same property and Court had refused to grant relief – Concealment of fact amounts to playing fraud with Court – Revision dismissed with cost of Rs. 10,000/-: *Kamar Mohammed Khan Vs. Begum Sabiha Sultan, I.L.R. (2016) M.P. 230*

– Section 9 and Land Revenue Code, M.P. (20 of 1959), Section 257 – Bar of civil suit – Contract for sale – Validity thereof – Could only be examined by Civil Court and not by revenue Court: *Kishorilal Tiwari Vs. Kandhilal, I.L.R. (2016) M.P. 512*

– Section 10 – Eviction suit against the petitioner/defendant – Stay application which was filed by the defendant on the ground that in respect of the same property, there is an agreement of sale between the parties and for which defendant has instituted a civil suit which is pending, was dismissed – Held – Suit of specific performance was filed prior to filing of the suit for eviction – Defendant is in possession by way of part performance and no more as tenant – Fate of the subsequent eviction suit is depended on the fate of the suit of specific performance – If defendant succeed in his suit and decree is executed then he would become the owner of the property and in such event, respondent/plaintiff would not be entitled for a decree in his suit for eviction – Proceeding of eviction suit is liable to be stayed – Application filed by the defendant u/S 10 CPC is allowed – Petition allowed: *Sarita Rathore (Smt.) Vs. Smt. Jaya Kunwar, I.L.R. (2017) M.P. 1058*

– Section 10 – Stay of Proceeding – Held – Provisions of Section 10 CPC can only be attracted where parties to the suit are same, the entire subject matter of both the suits are directly and substantially the same and identical – In the present case, parties in both the suits are different and reliefs claimed by the plaintiff in both the suits are not identical and therefore judgment passed in the previous suit will not operate as res judicata in the subsequent suit – Trial Court rightly rejected the application – Petition dismissed: *Mahant Hanuman Das Guru Swami Purshottam Das Ji Vs. Sapna Choudhary, I.L.R. (2017) M.P. *51*

– Section 10 – Stay of Proceeding – Petitioner through a NIT allotted work of construction of stadium and road to the respondent company which was not completed by the respondent by the stipulated period of 12 months, as a result of which the contract rescinded and bank guarantee of respondent was revoked – Respondent filed a suit before the Civil Court at Lucknow – Subsequently, another suit was filed by the respondent at the Civil Court Sagar – Petitioner moved an application u/S 10 CPC to stay the proceedings of subsequent suit at Sagar, which was dismissed – Challenge to – Held – The basic issue in both the suit is same and it is between the same parties, thus there is identity of whole cause of action in both the suits – It is also clear that in such a situation the subsequent suit shall be stayed and not the previous one – Impugned order set aside – Matter remanded back to trial Court to decide the application u/S 10 CPC afresh – Petition allowed: *Hindustan Steel Works Construction Ltd. Vs. M/s. Kandarp Construction (India) Pvt. Ltd., I.L.R. (2017) M.P. 1100*

– Section 10 and Land Revenue Code, M.P. (20 of 1959), Section 178 – Stay of Suit – Scope – Suit filed by respondents/Plaintiffs for declaration of title and possession against petitioner/defendant No.1 and prior to filing of civil suit, an application for partition was filed by petitioner before Tehsildar – Respondent No.1/ Plaintiff filed an application u/S 10 of the C.P.C. seeking stay of the proceedings before Tehsildar which was allowed by Trial Court – Challenge to – Held – Section 10 is applicable to suits and not to the proceedings and application u/S 178 of the Code of 1959 before Tehsildar comes under the definition of Proceedings – Suit means a process instituted in the Court of justice whereas proceedings means a legal action or process – Further held – As per section 10 C.P.C., subsequent suit is to be stayed where as in the present case, application filed prior to the filing of said civil suit – Order passed by Trial Court is contrary to law and section 10 C.P.C. – Impugned order is set aside – Application filed u/S 10 C.P.C. is rejected – Petition allowed: *Chinda Bai @ Baku Bai Vs. Govindrao, I.L.R. (2017) M.P. *88*

– Sections 10 & 151 – Stay of Suit – Pendency of Criminal Case – Defendant filed an application after four years of filing of W.S. for staying the proceedings of the civil suit on the ground of pendency of criminal case in respect of the same cause

of action – Held – There is no invariable Rule that the proceedings in the civil suit be stayed, unless disposal of criminal case or that simultaneous prosecution of criminal case and civil suit will invariably embarrass the accused - Defendant failed to disclose as to how the continuance of civil proceedings would cause embarrassment to him – No case was found to stay civil suit – Trial Court directed to proceed with the trial expeditiously: *Shyama Vs. Godawari, I.L.R. (2016) M.P. 1715*

– Section 11 – Res-Judicata – Findings of earlier suit regarding title and possession cannot be challenged in second suit by any party on basis of same cause of action, because as per principle of *Res-Judicata*, both parties are bound by findings of earlier litigation and ordinarily no party can avoid or take advantage of any contrary conduct or error of other party: *Hardas Vs. Dharmoo (Died) Through LRs. Ramprasad, I.L.R. (2019) M.P. 1454*

– Section 11 – Res Judicata – Held – Earlier reference petition was for seeking expenditure for extra lead, without there being any sanction/written order of Superintending Engineer but in instant reference petition, there was a written order by the SE permitting the change of quarry for circumstances beyond control of contractor – Plea of *res-judicata* not available to State: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Section 11 – Res-Judicata – Held – Once suit of petitioner is dismissed and had lost upto stage of second appeal, subsequent proceedings between same parties for same subject matter would be barred by principle of Res-Judicata/ Constructive Res-Judicata: *Pratap Singh Gurjar Vs. State of M.P., I.L.R. (2019) M.P. *42*

– Section 11 – See – Wakf Act, 1995, Section 54 & 85: *Rambharose Rathor Vs. M.P. Waqf Board, I.L.R. (2017) M.P. *160*

– Section 11 and Constitution – Article 226/227 – Constructive Res-Judicata – Applicability – Held – Apex Court concluded that principle of *res-judicata* is also applicable to writ proceedings – In earlier petitions/PIL, petitioners have not challenged the notifications – Fresh petition cannot be entertained – Petition barred by principle of constructive *res judicata* – Petition dismissed: *Kisan Sewa Sangh Vs. State of M.P., I.L.R. (2020) M.P. *1*

– Section 11 & Order 7 Rule 11 – Nature & Scope – Held – Provision of Order 7 Rule 11 has not been exhausted – Some other instances may also be taken into consideration for abiding the vexatious and frivolous litigation – Question of *res-judicata* may also be considered at this stage, if for decision of aforesaid question, evidence is not required – Mainly, pleadings of plaint should be considered – If *prima facie*, suit appears to be barred by any laws or *res-judicata*, Court may pass order

of rejection of plaint under Order 7 Rule 11 CPC: *Siddheshwari Devi (Smt.) Vs. Karan Hora, I.L.R. (2019) M.P. 2109*

– Section 11 & Order 7 Rule 11 – Principle of Res-Judicata – Held – Previous suit dismissed under Order 9 Rule 8 CPC after taking evidence – Records of previous suit and present suit reveals that land in dispute and the cause of action is the same – Second suit is not tenable and liable to be rejected – Revision allowed: *Siddheshwari Devi (Smt.) Vs. Karan Hora, I.L.R. (2019) M.P. 2109*

– Section 11 & Order 7 Rule 11 – Res Judicata – Scope and Grounds – Held – Scope of both provisions are quite distinguishable – For applying principle of res-judicata, earlier litigation should have been decided on merits whereas power under Order 7 Rule 11 C.P.C. can be exercised where suit is barred under any law: *Ramdevi Vs. Tulsa, I.L.R. (2019) M.P. 2356*

– Section 11 and Order 9 Rule 8 & 9 – Subsequent Suit – Maintainability – Respondent No. 1/plaintiff filed a suit which was dismissed for want of prosecution under Order 9 Rule 8 – His application under Order 9 Rule 9 CPC for setting aside ex-parte order was also dismissed in year 2011 which was not further challenged and the same attained finality – Subsequent suit filed by plaintiff in 2012 – Held – If suit is dismissed under Order 9 Rule 8 CPC, plaintiff is precluded from filing subsequent suit between same parties seeking same relief in respect of same cause of action – Impugned order set aside – Revision allowed: *Anandi Bai Vs. Jhanak Lal, I.L.R. (2018) M.P. *71*

– Section 11 & Order 21 Rule 89 & 90 – Execution Proceedings – Principle of *Res Judicata* – In an execution proceedings, an application/objection was filed under Order 21 Rules 89 & 90, which was rejected by the trial Court – When challenged further, the same was dismissed by the High Court as well as by the Supreme Court – Subsequently, another application was moved by the present applicant under the same provision before the trial Court which was also dismissed – Challenge to – Held – Principle of *res judicata* would apply in the execution proceedings – Objections raised by the applicants in a subsequent application on same set of facts is barred by the principle of constructive *res judicata* – Further held – Even if the same objections have not been decided expressly in previous round of litigation, the same shall be deemed to be barred by the principle of constructive *res judicata* – Revision dismissed: *Bhanu Shankar Raikwar Vs. Vijay Shankar Raikwar, I.L.R. (2018) M.P. 806*

– Section 11 and Order 23 – Principle of *Res-Judicata* & Principle of Waiver of Rights – Held – Order 23 and Section 11 of CPC are based on different principles – Distinction explained: *Suresh Kesharwani Vs. Roop Kumar Gupta, I.L.R. (2020) M.P. 1955*

– Section 11 and Order 41 Rule 23 – Principle of *Res-Judicata* – Grounds – On application by defendant u/S 11 CPC, trial Court dismissed the suit on ground of *res judicata* – Appellate Court remanded the matter for decision afresh on application u/S 11 CPC – Held – In absence of any additional evidence, if Appellate Court concludes that trial's Court order is not in accordance with law, then it should decide the matter by itself only and must not remand the matter simply for re-writing the judgment – Court should have adopted procedure under Order 41 Rule 23 – Matter sent back to appellate Court for decision afresh – Impugned order quashed: *Kusum Bai (Smt.) Vs. Smt. Vimla Devi (Dead), I.L.R. (2020) M.P. 450*

– Section 13 & 14 – See – Hindu Marriage Act, 1955, Sections 1(2), 2 & 9: *Ajay Sharma Vs. Neha Sharma, I.L.R. (2019) M.P. 406 (DB)*

– Section 15 and Order 7 Rule 11 – Pecuniary Jurisdiction – Held – Every suit shall be instituted in the Court of lowest grade competent to try it – Suit valued at Rs. 57,75,655/- and Civil Judge Class-I, does not have jurisdiction to hear the matter – Suit is dismissed – Revision allowed: *Ankur Dubey Vs. Jayshree Pandey, I.L.R. (2019) M.P. 2106*

– Section 16 & 17 – Expression "any portion of the property" – Held – The expression can be read as portion of one or more properties situated in jurisdiction of different courts and can also be read as portion of several properties situated in jurisdiction of different courts: *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Section 16 & 17 – Maintainability of Suit – Cause of Action – Held – Suit filed in a court pertaining to properties situated in jurisdiction of more than two courts, is maintainable only when suit is filed on one cause of action – In present case, plaint encompasses different cause of action with different set of defendants – Cause of action relating to Indore property and Bombay property were entirely different with different sets of defendants which could not have been clubbed together – Suit regarding Bombay property is clearly not maintainable in Indore Courts – Trial Court rightly striked out the pleadings and relief pertaining to Bombay property – Appeal dismissed: *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Section 16 & 17 – Place of Institution of Suit – Held – A suit in respect of immovable property or properties situated in jurisdiction of different courts may be instituted in any court within whose local jurisdiction, any portion of property or properties may be situated – Further, a suit in respect of more than one property situated in jurisdiction of different courts can be instituted in a court within whose local jurisdiction one or more properties are situated provided suit is based on same

cause of action with respect of properties situated in jurisdiction of different courts: *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Section 16 & 17 and General Clauses Act (10 of 1897), Section 13 – Word "property" – Held – Word "property" in Section 17 although has been used in 'singular' but by virtue of Section 13 of General Clauses Act, it may also be read as 'plural' i.e. "properties": *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Section 24 and Hindu Marriage Act (25 of 1955), Section 13 – Transfer of Proceeding – Grounds – Held – Merely because short dates are given to parties, no malice can be attributed on Court – Nothing to show, how short dates given by Court has adversely affected or have prejudiced the applicant – Mere apprehension of not getting an order in his/her favour without any proof thereof cannot be ground to order transfer of a case – Application dismissed: *Aarti Sahu (Smt.) Vs. Ankit Sahu, I.L.R. (2020) M.P. 2171*

– Section 24 & 151 – Transfer of Proceeding – Grounds – Applicant/plaintiff filed an application u/S 24 C.P.C. r/w Section 151 C.P.C. seeking transfer of his suit for specific performance from Ujjain to Indore on the ground that defendant No. 5 is a practicing lawyer at Ujjain and he may influence the proceedings – Application rejected by trial Court – Challenge to – Held – Power of transfer of cases should be exercised with due care and caution – In the present case, suit property is situated at Ujjain and all parties are residents of Ujjain – All allegations against defendant/ respondent No. 5 are of the period 2009-2010 and after that period, plaintiff failed to point out any incident when he tried to influence a Judge or tried to threaten the plaintiff or his witnesses – Proceedings cannot be transferred just because the respondent/defendant No.5 is an advocate and practicing at Ujjain – No case of transfer is made out – M.C.C. dismissed: *Bhanushali Grih Nirman Sahkari Maryadit, Ujjain Vs. Naggibai, I.L.R. (2018) M.P. *31*

– Section 34 – See – Interest Act, 1978, Section 2(b) & 3: *State of M.P. Vs. Ramlal Mahobia, I.L.R. (2018) M.P. 2813 (DB)*

– Section 35-B – Cost of causing delay – Held – The payment of cost is a condition precedent to the further prosecution of defence by the defendant – If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non payment of cost, yet the court while passing the judgment and decree will ensure that said amount is included in decree – Further held, the effect and impact of section 35-B (1) & (2) are different and are applicable in different stages: *Kamlesh (Smt.) Vs. Smt. Urmila Devi, I.L.R. (2016) M.P. 730*

– Section 47 & Order 21 Rule 2(3) – Certification of Adjustment of Decree – Objections – Grounds – Decree of eviction and arrears of rent – Decree holder expired – Respondent No. 2 to 4 (LR's of decreeholder) filed execution case where judgment debtors/petitioners filed an application seeking certification of adjustment of decree on the ground that they paid arrears of rent to one of the LR's of decree holder (Respondent No.1) and a fresh registered rent note has been executed in his favour by such LR – Subsequently, respondent no.1 initially acknowledged the application but later filed an objection alongwith affidavit denying the fact of adjustment of decree – Trial Court rejected the application of judgment debtor/petitioner – Challenge to – Held – Apex Court has held that under Order 21 Rule 2 CPC, it is open to the parties to adjust the decree by way of compromise but it is the duty of Court to record/ recognize such satisfaction and certify the same and if it is not done, the executing Court shall proceed to execute the decree – No error committed by Trial Court in rejecting such adjustment of decree – Trial Court directed to execute the decree as early as possible – Petition dismissed: *Pummy Devi (Smt.) Vs. Naresh Kumar Jain, I.L.R. (2018) M.P. 1444*

– Section 47, Order 21 Rule 17, 23(2) and Civil Court Rules, M.P. 1961, Rule 186 – Correct Decreetal Amount – Arbitration Award was passed and two different sums were granted in favor of respondent with interest from different dates – In application for execution, the respondent has mentioned the principal amount together and the interest together – Required particulars are not distinctly and completely set down as required under Rule 186 of Rules, 1961 – Executing Court directed to proceed with execution bearing in mind the provisions contained in Order 21 Rule 17, 23(2) of C.P.C. and Rule 186 of Rules, 1961: *M.P. Power Generation Co. Vs. Ansaldo Energic, I.L.R. (2016) M.P. 1055*

– Section 47 & Order 21 Rule 32(5) – Execution of Decree – Revision against dismissal of application/objection filed in the execution proceedings by Applicant/defendant u/S 47 and Order 21 CPC – Under a compromise, a consent decree passed declaring the title and possession of plaintiff on disputed house and permanent injunction was passed restraining defendants to interfere with possession – Held – In execution proceeding, plaintiff is praying for delivery of possession of the suit house – Under Order 21 Rule 32(5), the expression "the act required to be done" covers prohibitory as well as mandatory injunction and empowers the Court to issue mandatory injunction in order to enforce the decree of perpetual injunction - It includes the order of delivery of possession against the encroacher, because without possession a person cannot enjoy perpetual injunction granted in his favour – No illegality in the impugned order – Revision dismissed: *Keshav Prasad (Dead) Through L.Rs. Vs. Shriram Gautam, I.L.R. (2018) M.P. *8*

– Section 47 & Order 21 Rule 47 – Execution Proceedings – Obstructions regarding Lawful Possession – Grounds – Trial Court decreed the suit for possession in favour of respondents/plaintiff in 2006 – In execution proceedings, two sons of appellants/defendants alongwith other two persons filed an objection u/S 47 and Order 21 Rule 47 CPC on the ground that they are in possession of suit land/house since last 35 years and they had no knowledge about the suit – Application was rejected which was further affirmed in First Appeal – Challenge to – Held – Decree passed in 2006 has attained finality – In the objection filed by appellants, no material, documents to title, possession, partition (as claimed), mutation records, documents relating to Corporation tax, water tax, electricity bill etc. were filed to show that they were in lawful possession of suit land since more than 35 years – In absence of minimum essential prima facie pleadings and material, lower Court was not required to mechanically permit the obstructors to lead evidence and prove their possession as a straight jacket formula – Lower Courts rightly dismissed the objection – Appeal dismissed: *Padam Singh Vs. Radhelal, I.L.R. (2018) M.P. 1168*

– Section 60 – See – Constitution – Article 226: *Nirmal Singh Vs. State Bank of India, I.L.R. (2020) M.P. *11*

– Section 80 – See – Municipal Corporation Act, M.P., 1956, Section 401: *State of M.P. Vs. Smt. Betibai (Dead) Through Her LRs., I.L.R. (2020) M.P. 2826*

– Section 80(1) & (2) – Notice – Maintainability of Suit – Held – Suit was filed after taking permission u/S 80(2) CPC which was never further challenged and attained finality – No requirement of notice u/S 80(1) CPC – Suit is maintainable: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

– Section 89 Order 7 Rule 10 & 11 – Dismissal of suit for lack of jurisdiction directing to avail the alternative remedy – Facts – Suit of the plaintiff/petitioner was dismissed with a direction to refer the matter to the arbitrator vide order dated 11.11.2009 – Petitioner filed application before trial court for refund of court fee after dismissal of suit which was rejected – Held – Suit was dismissed accepting application of defendant under Order 7 Rule 11 being not maintainable within the jurisdiction of trial court in view of the stipulations of agreement between the parties and on the ground of availability of alternative remedy – None of the ingredients of Section 89 is available in the present case as it was a contested matter without there being any consent of the petitioner to refer the matter to arbitration: *Shriji Ware House Vs. M.P. State Civil Supplies Corporation Ltd., I.L.R. (2016) M.P. 2779*

– Section 89(2)(d) and Legal Services Authorities Act (39 of 1987), Section 2(d) – Order of Mediator – Execution – Held – Mediator cannot be said to be at par

with Lok-Adalat – Mediator is appointed u/S 89 CPC – Order of Mediator is not executable, hence execution proceedings not maintainable – Petition dismissed: *Mohar Singh Vs. Gajendra Singh, I.L.R. (2020) M.P. *18*

– Section 96 – Appeal against the order of compensation – Respondent/plaintiff undergoes sterilization operation, but she again got pregnant – Liability of the doctor – Prior to the operation it was explained that there is some possibility of failure of operation, and for failure, the concerning doctor shall not be held liable – Held – A doctor does not give a contractual warranty – He is not an insurer against all possible risks – He or she does not provide insurance that there would be no pregnancy after sterilization operation – There is a chance of sterile being turned into fertile even after the operation was done with due care and caution – A doctor is not liable for negligence: *State of M.P. Vs. Smt. Pushpa, I.L.R. (2016) M.P. 3083*

– Section 96 – Appeal – Maintainability – Appellant/Plaintiff filed a suit against Respondent No.3/defendant for specific performance of contract whereby a compromise decree was passed before the Lok Adalat, under which defendant agreed to enforce the agreement to sale – Respondent No. 1 & 2 filed an appeal u/S 96 C.P.C. submitting that before the date of compromise, Respondent No.3 has already executed a sale deed in their favour and has suppressed this fact before the Lok Adalat and on basis of the sale deed their names have also been mutated in revenue records – Appellate Court allowed the appeal and remanded the matter back for fresh adjudication – Appellant/Plaintiff filed this appeal – Held – When compromise was executed before the Lok Adalat, Respondent No.3 was not the owner of the property and compromise was effected by playing fraud – Compromise has been entered before the Lok Adalat in accordance with provisions of C.P.C. and when the award is *void ab initio*, then an appeal u/S 96 is maintainable – Miscellaneous Appeal dismissed: *Jahar Singh Lodhi Vs. Ramkali, I.L.R. (2017) M.P. 1462*

– Section 96 – See – Arbitration and Conciliation Act, 1996, Section 37: *Surajmal (Deceased) Through His LRs. Vs. Roopchand (Deceased) Through His LRs., I.L.R. (2019) M.P. 2553*

– Section 96 – See – Specific Relief Act, 1963, Section 34: *Akshay Doogad Vs. State of M.P., I.L.R. (2016) M.P. 217 (DB)*

– Section 96, Order 7 Rule 11 & Order 6 Rule 16 and Constitution, Article 227 – Writ Petition – Maintainability – Trial Court has not passed the order under Order 7 Rule 11 C.P.C. but passed the order under Order 6 Rule 16 C.P.C. and that does not mean rejection of plaint – Writ petition maintainable: *Sunita Sharma (Smt.) Vs. Deepak Sharma, I.L.R. (2018) M.P. 2435*

– Sections 96, 104(1) & (2) & 107(2) – Miscellaneous Appeal – Held – Appellate Court hearing an appeal against a decree exercises original jurisdiction as available to trial Court – Apex Court concluded that an appeal u/S 96 CPC is a continuation of a suit – Further, "an appeal against a decree" is denotably different from "an appeal against an order" – Section 104(2) bars a second miscellaneous appeal against any order of the appellate Court passed in miscellaneous appeal u/S 104(1) CPC: *Mangilal Vs. Ganpatlal, I.L.R. (2019) M.P. 876*

– Sections 96, 104(1) & (2), Order 43 Rule 1 and Order 39 Rule 1 & 2 – Injunction Order – Miscellaneous Appeal – Maintainability – Held – Misc. Appeal u/S 104(1) r/w Order 43 Rule (1)(r) CPC shall be maintainable before the High Court if interim injunction order is granted by lower appellate Court in an appeal u/S 96 CPC – Misc. appeal before High Court shall not be maintainable if order of interim injunction is passed by lower appellate Court in Misc. Appeal u/S 104(1) r/w Order 43 Rule 1(r) in view of the bar u/S 104(2) CPC – In present case, impugned order was passed in an appeal u/S 96 CPC and hence appeal is maintainable but in the present facts, possession has already been taken by respondents after passing of decree – No interference is called for – Appeal dismissed: *Mangilal Vs. Ganpatlal, I.L.R. (2019) M.P. 876*

SYNOPSIS : Section 100

1. Concurrent Findings/Jurisdiction of Court

– Section 100 – Finding of fact – Concurrent findings of the two courts about the joint family property are not required to be interfered with: *Ramraj Patel Vs. Hiralal Patel, I.L.R. (2016) M.P. 1738*

– Section 100 – No substantial question of law involved – No interference in concurrent findings of fact warranted – Held – Both the Courts have recorded pure findings of facts that too after proper appreciation of entire evidence on record and dismissed the suit – No substantial question of law arises warranting interference – Appeal dismissed: *Sunil Rao Vs. State of M.P., I.L.R. (2016) M.P. 2009*

– Section 100 – Second Appeal – Concurrent finding of facts – Appellant/ Plaintiff filed a suit against present respondents and two other persons for declaring

sale deeds as *null and void* and for perpetual injunction – *Ex-parte* decree against the defendants was passed on 04.07.2001 – No appeal preferred against it – Thereafter, present respondents forcefully occupied the disputed land and constructed houses on it – Execution case filed by present appellant was also dismissed – Subsequent suit filed by appellant for possession of same land was dismissed on 08.05.2014 and his appeal also remained unsuccessful – Present suit property and previous suit property are one and the same – Previous decree not declaring title of plaintiff but only declaring sale deed as *null and void* – Appellant himself admitted that respondents were in possession of disputed land before 2001 – Held – Though in previous suit decree of perpetual injunction was granted in favour of the appellant on 04.07.2001 but appellant was not in actual possession prior to passing of decree, and he had not sought the relief of possession by amending his plaint in previously decided suit – Concurrent finding that appellant remained unsuccessful in proving title and possession – No substantial question of law arise – Appeal dismissed in *limine*: *Ram Babu Pathak Vs. Munnilal, I.L.R. (2017) M.P. 359*

– Section 100 – Second Appeal – Concurrent findings of fact – Appreciation of evidence not permissible on question of possession of property – Held – It being finding of fact could not be interfered in Second Appeal: *Jwala Prasad Vs. State of M.P., I.L.R. (2016) M.P. 1133*

– Section 100 – Second Appeal – Concurrent Findings of Fact – Jurisdiction – Held – Concurrent findings of Courts below are based on appreciation of evidence which cannot be interfered by this Court u/S 100 CPC – Court u/S 100 CPC cannot re-appreciate the evidence even if another view is possible – Jurisdiction of this Court u/S 100 CPC is limited – Concurrent findings of fact cannot be interfered until and unless the same is perverse or based on no evidence or contrary to material on record: *Ummed Baghel Vs. Mohd. Anees Khan, I.L.R. (2017) M.P. 2428*

– Section 100 – Second Appeal – Concurrent findings of fact – Suit for declaration and permanent injunction – Adverse Possession – Suit property mutated in name of State of M.P. in 1954 – Appellants were never allotted nor remained in possession of suit property – Held – Necessary ingredients of adverse possession not made out – Appeal dismissed: *Jwala Prasad Vs. State of M.P., I.L.R. (2016) M.P. 1133*

– Section 100 – Second appeal – Suit for declaration that appellant be declared as tenant – Both the courts below held that appellant has failed to establish landlord-tenant relationships – Landlord has already filed a suit for eviction as appellant was never inducted by landlord but in fact is a sub-tenant without the permission of landlady – Where both the courts below recorded concurrent findings of facts which are in fact and in effect impregnable in the nature – Do not warrant any interference as no question of law is involved: *Sunil Enterprises Vs. Smt. Mithila Devi, I.L.R. (2016) M.P. 193*

– Section 100 – Second Appeal – Scope & Jurisdiction – Held – There is a concurrent finding of facts by the Courts below that plaintiff failed to establish customary divorce with his wife – Both the Courts below disbelieved the divorce deed – High Court exceeded in its jurisdiction, interfering in the concurrent findings of fact in Second appeal – Impugned order quashed – Appeal allowed: *State of M.P. Vs. Dungaji (D) By LRs., I.L.R. (2019) M.P. 2425 (SC)*

– Section 100 – Second Appeal – Scope & Jurisdiction – Held – It was not open to High Court u/S 100 CPC to interfere with concurrent findings of fact which was based on proper appreciation of evidence on record: *State of M.P. Vs. Sabal Singh (Dead) By LRs., I.L.R. (2020) M.P. 751 (SC)*

– Section 100 – Substantial Question of Law – Findings of Fact – Held – Question of readiness and willingness is a question of fact and until and unless findings recorded by Courts below are perverse and *de hors* the record, the findings of fact, may be erroneous but cannot be interfered with u/S 100 CPC – Apex Court concluded that findings of fact may be erroneous findings of fact but it would not give rise to substantial question of law and concurrent findings of fact should not be interfered in exercise of powers u/S 100 CPC: *Prem Narain Vs. State of M.P., I.L.R. (2019) M.P. 1428*

– Section 100 – Substantial Questions of Law – Findings of Fact – Possession – Held – Finding with regard to possession are findings of fact – There is a concurrent finding that R-1/ plaintiff is in possession of land in dispute – Civil Suit cannot be dismissed on ground of non-claiming the relief of possession – Apex Court concluded that even if findings of fact may be erroneous findings of fact, then it would not give rise to substantial question of law – Substantial questions of law does not mean the question of law, it is to be substantial in nature – High Court while exercising powers u/S 100 CPC should not interfere with concurrent findings of fact – Appeal dismissed: *Bhikam Singh Vs. Ranveer Singh, I.L.R. (2019) M.P. 577*

2. Leave to File Second Appeal

– Section 100 – Second Appeal – Appellant neither a party before the trial Court nor before First Appellate Court – Seeking leave to file second appeal – Facts – Appellant purchased the suit property after the property has been transferred three to four times – Trial court partly decreed the suit on 27.09.1997 – First Appellate Court dismissed the appeal on 16.01.2004 – Appellant purchased the land vide registered sale deed dated 29.03.2008 – Whether in such facts leave to file second appeal can be granted – Held – No, as the litigation has attained finality in the year 2004 with dismissal of regular Civil Appeal and the appellant has purchased the property in question on 29.03.2008, so he cannot be said to have acquired any right through its original owner or through subsequent purchasers – Appellant is at liberty to bring a

fresh suit – Leave to file second appeal cannot be granted – Appeal dismissed: *Karuna Gehlot (Smt.) Vs. Manikchand Choubey, I.L.R. (2017) M.P. 624*

3. Limitation

– Section 100 and Limitation Act (36 of 1963), Section 5 – Second Appeal – Condonation of Delay – Sufficient Cause – Delay of 485 days in filing second appeal – Appellants submitted that one of the appellants contacted the counsel for filing appeal and they were under the impression that he had given certified copy to advocate for filing appeal – Held – Sole reason may be bonafide but not supported by valid reasons and materials as for filing the appeal, not only certified copy of the impugned judgment but vakalatnama duly signed by all parties, copy of plaint, written statement and other documents are also required to be handed over to counsel – Appellant has not stated that he purchased the court fee and paid the counsel fee also which is required for filing the appeal – Vakalatnama signed on 19.01.15 and appeal was filed on 20.01.15 which clearly establish that appellant did not hand over the vakalatnama alongwith the certified copy of judgment within period of limitation – Power to condone the delay can be exercised only when party approaching the Court satisfies that he had sufficient cause for not filing the appeal within prescribed period of limitation - Reasons given in the condonation application are vague in nature – Application for condonation of delay dismissed and consequently appeal also dismissed: *Sampatbai Vs. Smt. Kamlabai, I.L.R. (2018) M.P. *35*

4. Pleadings & Proof

– Section 100 – Second Appeal – Facts – Suit by Appellant/Plaintiff for declaration of title and for perpetual injunction – Counter claim – Claim for declaration of title and for perpetual injunction by Respondent/Defendant No. 1 – Admitted fact – Smt. Dropta Bai was the original owner of the suit property on basis of registered sale deed dated 25.09.1975 who expired in the year 2003 as issueless and intestate – Plaintiff claimed the suit property on basis of the fact that plaintiff is second husband of Dropta Bai after "Chhod Chhutti" of first husband Ramlal – Defendant No. 1/ Respondent No. 1 claiming suit property as being of her husband and Dropta Bai executed an agreement on 27.09.1975 in favour of husband of Defendant No. 1 – Trial Court – Partially decreed suit of Appellant/Plaintiff by granting decree of perpetual injunction – Counter claim was totally dismissed – First Appellate Court – Dismissed both the suit as well as the counter claim – Second appeal by plaintiff – Held – It is not proved by the appellant/plaintiff that Dropta Bai has taken legal divorce from the first husband nor the customary "Chhod Chhutti" was pleaded or established, Dropta Bai cannot be regarded as legally wedded wife of the plaintiff – Question of facts raised by the appellant does not call for any interference – Consequently, appeal dismissed in limine: *Jagannath Vs. Smt. Sarjoo Bai, I.L.R. (2016) M.P. 3338*

5. Substantial Question of Law/Burden of Proof

– Section 100 – Second Appeal – Burden was on the appellants to prove that there was a partition and that the property subsequently purchased was not purchased from the nucleus of the joint family property – Since the appellants have failed to prove the previous partition, their entire stand was wiped up – The courts below have rightly decreed the suit filed by the respondents/plaintiffs – No substantial question of law arises for adjudication – Appeal dismissed: *Ramraj Patel Vs. Hiralal Patel, I.L.R. (2016) M.P. 1738*

– Section 100 – Second Appeal/Substantial question of law – Both the Courts below found the need of the landlord as *bona fide* – In view of the evidence on record that son of the landlord is running furniture shop adjacent to the suit shop and that the landlord would have enough space for his proposed business if the partition is removed, both the Courts rightly decreed suit – No substantial question of law was found to be involved – Second Appeal dismissed: *Vinod Kumar Goyal Vs. Avneet Kumar Gupta, I.L.R. (2016) M.P. 2325*

– Section 100 – Second Appeal – Maintainability – Appeal does not involve substantial question of law and is not maintainable nor the judgments of the courts below suffers from any illegality on merits and even otherwise, it has become infructuous as plaintiff/landlord has obtained the possession of the suit accommodation in execution proceedings – Appeal dismissed in limine: *Virendra Prajapati Vs. Shri K.B. Agarwal, I.L.R. (2018) M.P. 518*

– Section 100 – Substantial question of law – Unless the evidence is adduced on record in support of the pleading no inference could be drawn in favour of the party who has taken the defence in the pleading and not proved the same – The trial court as well as appellate court were bound to consider the matter in the light of pleading and unrebutted evidence – Cross examination of the witness is a material implement in the hand of other side by which the party can put his case in his cross examination to the witness of other side as pleaded in pleading – Absence of cross examination and not filing the written statement and in the light of unrebutted and uncrossed evidence, no substantial question of law arises – Second Appeal dismissed: *Indrapal Singh @ Raja Bhaiya Vs. Jandel Singh, I.L.R. (2016) M.P. 1448*

6. Miscellaneous

– Section 100 – Second Appeal – Held – The Court in exercise of power u/S 100 CPC cannot re-appreciate the evidence even if another view is possible: *Babu Lal Vs. Sunil Baree, I.L.R. (2017) M.P. 2692*

– Section 100 – Second Appeal – Question of Fact – Finding of Fact – Finding vitiated by non consideration of relevant evidence or by showing erroneous approach of the matter and findings are perverse: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

– Section 100 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(f): *Tarunveer Singh Vs. Mahesh Prasad Bhargava, I.L.R. (2017) M.P. 3028*

– Section 100 – See – Registration Act, 1908, Section 49: *Prem Narain Vs. State of M.P., I.L.R. (2019) M.P. 1428*

• **– Section 100 & Order 7 Rule 11 and** Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 – Held – Suit for declaration filed in contravention of Section 64(2) of Co-operative Societies Act is not maintainable – Appellant could have approached Tribunal: *Har Prasad Yadav Vs. Mahaveer Prasad Jain, I.L.R. (2016) M.P. 531*

– Section 100 & Order 41 Rule 22 – Appeal preferred by the appellant as well as the cross-objections filed by the respondents dismissed by the first appellate Court against which the appellant has preferred second appeal and respondents filed no appeal – Held – Once respondents did not file appeal against dismissal of cross-objections, it can be assumed that they accepted the findings of the first appellate Court – Appeal is the continuation of suit and therefore the pleadings raised in the cross-objection by respondents are binding over them: *Rajkumar Chug Vs. Dheerendra Chug, I.L.R. (2017) M.P. 638*

– Section 100, Order 43 Rule 1(u) & Order 41 Rule 25 – Substantial Question of Law – Additional Evidence – Suit of plaintiff dismissed by Trial Court – Appellate Court remitted the matter back to record additional evidence on the question of encroachment – Challenge to – Held – In miscellaneous appeal filed under Order 43 Rule 1(u) CPC, there is no need for proposing and framing of substantial question of law which is a requirement in a second appeal u/S 100 CPC – Miscellaneous appeal can be entertained if there exists any substantial question of law – As per the provisions of Order 41 Rule 25, if trial Court has not determined any question of fact, appellate Court may direct the Court below to take additional evidence as required and return the case to appellate court after recording of evidence, where the appellate Court will pronounce its judgment – In the present case, appellate Court committed an error in remitting the matter in wholesale manner – Appellate Court should have exercised powers under Order 41 Rule 25 CPC – Impugned order set aside – Matter remitted back to appellate Court for necessary orders as per Order 41 Rule 25 CPC – Appeal allowed: *Gooha Vs. Smt. Uma Devi, I.L.R. (2018) M.P. 528*

– Section 100(4) & (5) – Only one substantial question of law framed at the time of admission of second appeal and no application has been preferred by the respondents during pendency of appeal for the last 13 years to frame additional substantial question of law – Court declined to hear on any other ground: *Rajkumar Chug Vs. Dheerendra Chug, I.L.R. (2017) M.P. 638*

– Section 107 – See – Land Revenue Code, M.P., 1959, Section 43: *Prakash Pathya Vs. Bati Bai, I.L.R. (2020) M.P. 2818*

– Section 107, Order 9 Rule 13, Order 43 Rule 1(d) & Order 47 Rule 1 – Setting aside of ex parte decree – Review – MJC was dismissed by trial Court primarily on the ground of limitation – High Court in appeal by way of clemency (since the respondent was a pardanashin woman and dependent on her lawyer for conducting her case), and by imposing cost of Rs. 3,000/- condoned the delay and also allowed the application under Order 9 Rule 13 and set aside the ex parte decree – Held – Power of the High Court in a review are very much limited and the errors have to be apparent on the face of record – Once the Court consciously come to the conclusion that there was sufficient cause shown by the respondent – Then it was definitely clothed with the jurisdiction to consider the effect of setting aside the impugned order – Therefore, Review Petition dismissed as being without merit: *Allauddin Vs. Smt. Sayra Bi, I.L.R. (2016) M.P. 507*

– Section 107(1) – See – Court Fees Act, 1870, Section 12: *Badrilal (deceased) through L.Rs. Nirmala Vs. Akash, I.L.R. (2019) M.P. 1076*

– Section 107(2) & Order 7 Rule 11 – Powers of Appellate Court – Valuation of Court Fees – Held – Appellate Court has same powers as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein – If suit can be dismissed or rejected under Order 7 Rule 11 CPC, then the appeal which is in continuation of suit can also be decided or rejected under the said provision, specially on issue of Court fees and valuation of appeal – Appellate Court rightly passed the impugned order directing appellant/plaintiff to pay Court fees – Petition dismissed: *Badrilal (deceased) through L.Rs. Nirmala Vs. Akash, I.L.R. (2019) M.P. 1076*

– Section 114 – Review against order passed in Writ Appeal – Decision passed in Writ Appeal challenged by way of SLP before Apex Court – SLP dismissed – Held – That against the Writ Appellate Order SLP too has been dismissed, thereby affirming the Appellate Order, so review petition is devoid of merits – Petition dismissed: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Section 114 & Order 43 Rule 1-A(2) and Hindu Marriage Act (25 of 1955), Section 13-B – Compromise Decree – Review/Recall – Held – Wife alleged that husband obtained compromise decree by practicing fraud – Instead of filing

appeal, respondent (wife) rightly approached trial Court for recall of compromise decree – Revision dismissed: *Shiv Singh Vs. Smt. Vandana, I.L.R. (2019) M.P. *64*

– Section 114 & proviso to Order 5 Rule 9 (5) and High Court of Madhya Pradesh Rules, 2008, Chapter 15 Rule 13 – Review of order is sought on the ground of procedural illegality as the petitioners were not served with the notice and the office has erred in treating the petitioners to have been served – Held – Presumption as to the service of notice – If the acknowledgement is not received within 30 days from the date of issuance of summons, presumption of service of notice has rightly been drawn by the office – Proviso to Order 5 Rule 9(5) is applicable to this proceeding – Petition is dismissed: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. M/s. Schaltech Automation P. Ltd., I.L.R. (2016) M.P. 825*

– Section 115 – Maintainability – Revision against order condoning delay in filing appeal arising from dismissal of eviction suit – Held – The order is such that if reversed then appeal would be dismissed as time barred, therefore order is revisable – Revision maintainable: *Shantilal (Dr.) Vs. Modiram, I.L.R. (2016) M.P. *44*

– Section 115 – Revision – Scope – Held – Issue of rate being purely a factual issue, does not call for any detailed analysis or deliberation in a revision petition: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Section 115 – Revision – Scope & Jurisdiction – Held – Court should not interfere in the revisional jurisdiction unless there is jurisdictional error or material irregularity: *Chhotelal Gupta Vs. Lahori Prasad Pasi, I.L.R. (2018) M.P. 2965*

– Section 115 – See – Practice & Procedure: *Raj Narayan Singh Vs. M/s. Pushpa Food Processing Pvt. Ltd., I.L.R. (2018) M.P. 878*

– Section 137(2) – See – Constitution – Article 343 & 345: *Vinod Devi (Smt.) Vs. Smt. Saroj Devi Gupta, I.L.R. (2018) M.P. 1164*

– Section 141 – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Sections 7-A, 7-B & 17-A: *State of M.P. Vs. M/s. Vigyashree Infrastructure Ltd., I.L.R. (2018) M.P. *111 (DB)*

– Section 141 – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 12: *State of M.P. Vs. M/s. Vigyashree Infrastructure Ltd., I.L.R. (2018) M.P. *111 (DB)*

– Section 141 & Order 5 and High Power Caste Scrutiny Committee – Procedure – Held – Committee constituted in pursuance of Supreme Court order and by a circular, a detailed procedure has been laid down to be followed by the Committee, thus it is not required to follow provisions of Order 5 CPC: *Jaipal Singh Vs. State of M.P., I.L.R. (2019) M.P. *71*

– Section 144 – Restitution – Applicability – Held – Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceedings or is set aside or modified in any suit instituted for the purpose – In present case, provisions of Section 144 CPC not attracted there being no variation or reversal of a decree or order – There was no decree or order of trial Court by virtue of which appellant was given possession of property or respondent was mandated to hand over possession to appellant – Impugned order set aside – Application filed before executing Court stands dismissed – Appeal allowed: *Murti Bhawani Mata Mandir Rep. Through Pujari Ganeshi Lal (D) Through LR Kailash Vs. Ramesh, I.L.R. (2019) M.P. 726 (SC)*

– Section 144 – Restitution of Possession – Suit for declaration, recovery of possession and mesne profit was decreed in favour of petitioner – Accordingly possession was delivered to petitioner – Meanwhile appeal filed by respondent/ defendant was allowed and matter was remanded for fresh trial – Petitioner filed a miscellaneous appeal before High Court whereby the same was also dismissed – Defendant filed an application u/S 144 for restitution of possession and mesne profit which was allowed by the trial Court – Appellate Court also confirmed the trial Court's order – Instant revision by the petitioner/plaintiff against order of restitution of possession and to pay mesne profit – Held – Principle of law enunciated u/S 144 CPC is founded on equitable principle that one who has taken advantage of a decree of court should not be permitted to retain it, if the decree is reversed or modified – As per Section 144(1) CPC 'restitution' means restoring to a party on the modification, variation or reversal of a decree what has been lost to him in execution of decree or in direct consequence of decree – Party seeking such restitution is not required to satisfy the Court about its title or right to property except showing its deprivation under a decree and the reversal or variation of decree – Revision dismissed: *Mana @ Ashok Vs. Budabai, I.L.R. (2018) M.P. 598*

– Section 144 & Order 20 Rule 12 – Mesne Profit – Held – When a decree under which possession has been taken is reversed, mesne profit should be awarded in restitution from the date of dispossession and not merely from the date of decree of reversal and in such case, mesne profit is not what the party excluded would have made but what the party in possession has or might reasonably have made: *Mana @ Ashok Vs. Budabai, I.L.R. (2018) M.P. 598*

– Section 148 & 151 – See – Specific Relief Act, 1963, Section 28: *Gitabai Vs. Sunil Kumar, I.L.R. (2018) M.P. 1235*

– Section 151 – Inherent Powers of Court – Practice & Procedure – Petition by plaintiff against dismissal of application dated 05.12.2016 u/S 151 CPC for recalling of order by which Court directed parties to appear before Collector for impounding

unregistered and unstamped agreement of sale, in the suit of specific performance of contract – Held – Trial Court vide order dated 25.02.15 referred the document to Collector, said order has not been challenged by the petitioner at the relevant time instead filed application u/S 151 on the basis of Chandanlal's case – Now, after filing this petition, petitioner also wants to challenge that order by way of amendment – Section 151 cannot be invoked where specific provision is available – Plaintiff could have filed a review under Order 47 CPC or could have challenged the order by way of writ petition at relevant point of time, which was not done – Order dated 25.02.15 has attained finality and cannot be challenged by way of an amendment in this petition – Order was passed three years back and since then there is no progress in the civil suit – Plaintiff adopted wrong procedure of law – No interference called for – Trial Court rightly dismissed the application – Petition dismissed: *Alok Vs. Smt. Shashi Somani, I.L.R. (2018) M.P. 874*

– Section 151 – Jurisdiction – Held – Section 151 provides only for procedural law and not for substantive rights of parties – Parties are Muslim, therefore Hindu Marriage Act 1955 would not be applicable – No order of maintenance can be passed u/S 24 of the Act of 1955 r/w Section 151 C.P.C. – Trial Court exceeded its jurisdiction while granting maintenance: *Mohd. Hasan Vs. Kaneez Fatima, I.L.R. (2018) M.P. 1930*

– Section 151 – Suit for eviction and recovery of rent – Respondent/Plaintiff gave power of attorney to her son – He filed affidavit under Order 18 Rule 4 of C.P.C. – Objection was raised to the effect that whether the rent was properly paid or not must be in the personal knowledge of Respondent/Plaintiff, and her son can not be permitted to depose as Plaintiff – Held – It can not be held as a strait jacket formula that in no case power of attorney holder can depose about non-payment of rent – No interference under Article 227 of the Constitution, even if the order so passed is erroneous – Petition is dismissed: *Ghanshyam Chandil Vs. Smt. Ramkatori Agrawal, I.L.R. (2016) M.P. 2682*

– Section 151 & 152 – Correction in Judgment/Decree – Accidental Slip or Omission – Scope – Held – Apex Court concluded that u/S 152 CPC, any clerical or arithmetical mistake in judgment or decree due to any accidental slip or omission may be corrected at any time but validity of decree cannot be examined – In present case, in the decree, condition of return of sale consideration with interest in the event of failure to execute the sale deed does not amount to accidental mistake or slip warranting correction of mistake u/S 151 or 152 CPC – Revision dismissed: *Mastram Vs. Karelal (Through LRs), I.L.R. (2019) M.P. *25*

– Section 152 – Rectification – Scope – Held – It is clear that in the judgment, answer to issue No. 2 was given in favour of applicant/plaintiff – It is unintentional

omission on part of Court that such consequential relief is not incorporated in concluding paragraph/operative portion of judgment – Such errors needs to be corrected in exercise of powers u/S 152 CPC – Impugned order set aside – Court below directed to draw corrected decree – Application partly allowed: *Khursheed Bai Vs. State of M.P., I.L.R. (2019) M.P. 1159*

– Section 152 – See – Actus curiae neminem gravabit: *Khursheed Bai Vs. State of M.P., I.L.R. (2019) M.P. 1159*

– Section 152 & 153 – Execution Application – Amendment in Cause Title – Scope – Held – In the suit, due to accidental slip, proprietor of the firm was not arrayed, however firm was arrayed as Defendant – Such error can be permitted to be corrected even in execution proceedings, as by such recourse, no change or amendment is allowed in judgment/decree to the prejudice of Judgment Debtor – It is neither addition nor substitution of a party but merely a clarification or description of defendant firm – Mistake is *ex-facie bonafide* – Petition dismissed: *Ramesh Joshi Vs. The Government of M.P., I.L.R. (2019) M.P. 2281*

– Section 152 & 153 and Limitation Act (36 of 1963), Section 21(1) – Applicability – Held – As the amendment sought was not an addition or substitution of a party but merely clarification and correction of error which was bonafide, provisions of Section 21(1) not attracted: *Ramesh Joshi Vs. The Government of M.P., I.L.R. (2019) M.P. 2281*

– Order 1 Rule 1 & Order 2 Rule 3 – Misjoinder of Plaintiff & Joinder of Cause of Action – Held – Provisions of Order 2 Rule 3 CPC is related to joinder of cause of action by one plaintiff against defendant or defendants jointly – Appellants objection is that plaintiffs jointly can't bring the suit, it means there is misjoinder of plaintiff – Such objection will be governed by Order 1 Rule 1 CPC and not under Order 2 Rule 3 CPC: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

SYNOPSIS : Order 1 Rule 10

1. Necessary Party & Proper Party

– Order 1 Rule 10 – For impleading attesting witness as a party against whom no relief is claimed – Proposed defendant is only the attesting witness of the

document – Unless some allegation is made against such witness to assess the executant of document with some fraud or dishonesty such attesting witness is neither necessary party nor proper party in the suit: *Swati Nagpure Vs. Smt. Kamla Nagpure, I.L.R. (2016) M.P. 41*

– Order 1 Rule 10 – Necessary Party – Locus Standi – Held – R-1 claiming her title through the grandfather of petitioner whereas petitioner claiming that his grandfather was never the owner of the suit land and the unregistered sale deed produced by R-1 is a forged document – It cannot be said that petitioner has no locus standi to oppose the claim of R-1 – Petitioner is a necessary party thus his application for impleadment allowed – Petition allowed: *Deepak Kumar Saxena Vs. Smt. Nirmala Devi, I.L.R. (2019) M.P. *35*

– Order 1 Rule 10 – Necessary party – Respondents no. 1 to 3 have filed suit for Specific Performance of Contract against respondent no. 4 – Petitioner filed application for impleading as party, as at the time of marriage with son of respondent no. 4, it was agreed that half portion of house would be given to petitioner – She is in possession of half portion of house and is getting rent from tenants – Held – Petitioner would be adversely affected if any decree of Specific Performance of Contract is passed – Petitioner is a necessary party – Trial Court committed an error of jurisdiction in dismissing the application u/o 1 Rule 10 – Petition allowed: *Tabassum (Smt.) Vs. Shabbir Hussain, I.L.R. (2016) M.P. 1311*

– Order 1 Rule 10 – Proper Party & Necessary Party – Eviction Suit – Petitioner's application under Order 1 Rule 10 CPC for impleading him in suit on the ground that he is in possession of suit property since last 40-50 years and same was gifted to his father by the owner and thus he is a necessary party, was rejected – Challenge to – Held – Petitioner has not purchased the suit property from plaintiffs nor is a tenant of plaintiff's house – For effective adjudication of controversy involved in suit, presence of petitioner is not necessary – Effective decree could be passed in his absence – If he is added, the scope of suit will be enlarged and suit for eviction will convert into suit for title – Further held – Plaintiffs being *dominus litus*, cannot be compelled to add a stranger to the suit against whom they have not prayed any relief, unless it is a rule of law – A stranger to suit making his claim independently and adverse to title of plaintiff, is neither necessary party nor proper party – Petition dismissed: *Nitin Sirbhaiya Vs. Divya Badhwani, I.L.R. (2017) M.P. 1860*

– Order 1 Rule 10 and Specific Relief Act (47 of 1963), Section 19 – Proper Party & Necessary Party – Suit for specific performance of contract between respondent No.1 and 2 – Petitioners filed application under Order 1 Rule 10 C.P.C. which was rejected – Challenge to – Held – Petitioners are not parties to contract and neither plaintiff has sought any relief against them – It cannot be said that such a

decree sought cannot be passed in absence of petitioners – Question of proper parties has to be decided looking into the scope of suit – Question involved in suit is enforceability of contract entered into between respondent No. 1 and 2 and if present petitioners are introduced as party in the suit, scope of suit would be enlarged and it would turned into a suit for title – Further held – Plaintiff cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of rule of law – No error in impugned order – Petition dismissed: *Mangai Bai (Smt.) Vs. Smt. Hansi Bai @ Hasu Bai, I.L.R. (2018) M.P. 1504*

2. Principle of *Lis Pendens*

– Order 1 Rule 10 – Impleadment of Purchaser of Suit property – Principle of Lis Pendens – Held – Sale deed in his favour already executed prior to institution of suit, thus principle of lis pendens would not apply – Decree would not be binding on him: *Sehdev Dubey Vs. Smt. Pushpa Tiwari, I.L.R. (2019) M.P. *45*

3. Stage of Proceeding

– Order 1 Rule 10 – Impleadment of Party – Stage of Proceeding – Held – An application under Order 1 Rule 10 can be filed at any stage of proceedings but it does not mean that inspite of specific objection raised by defendants in written statement, the plaintiff, after proceeding further with the suit, may file such application at the stage of final hearing – Plaintiffs cannot be allowed to reopen proceedings under garb of such application because when a new defendant is added, a de novo trial would be conducted so far as newly added defendant is concerned – Impugned order allowing the application is set aside – Petition allowed: *Sehdev Dubey Vs. Smt. Pushpa Tiwari, I.L.R. (2019) M.P. *45*

4. Miscellaneous

– Order 1 Rule 10 – Question involved – Whether an application under Order 1 Rule 10 could have been allowed in the garb of mandatory compliance of Section 8 (2) of M.P. Public Trust Act, 1951 – Held – In the name of the mandatory notice to the State Government, Registrar Public Trust could not have been impleaded as a party on an application under Order 1 Rule 10 filed at the behest of the plaintiff: *Trimurti Charitable Public Trust vs. Munikumar Rajdan, I.L.R. (2016) M.P. 3307*

– Order 1 Rule 10 – Term "dominus litus" – Held – Petitioner not claiming any relief against R-1 – It is the case of petitioner that by creating forged document, R-1 trying to grab government land – Petitioner's application for impleadment cannot be rejected on the ground that plaintiff is *"dominus litus"*: *Deepak Kumar Saxena Vs. Smt. Nirmala Devi, I.L.R. (2019) M.P. *35*

• **– Order 1 Rule 10(2)** – Court may strike out and add parties – Held – It cannot be laid down as an absolute proposition that a third party can never be impleaded in the suit but where the third party can show a fair semblance of title or interest he can certainly file an application for impleadment and ought to be impleaded as a party: *Ramit Kumar Pathak Vs. Pawan Kumar Pathak, I.L.R. (2016) M.P. 418*

– Order 2 Rule 2 – Scope – Held – In present case, suit is not against same defendants or same defendants jointly – There are different set of defendants who have different cause of action – Order 2 Rule 2 cannot be read in a manner as to permit clubbing of different cause of action: *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Order 2 Rule 2 – Second Suit – Burden to prove necessary facts with regard to debarring plaintiff from filing second suit is on defendant and it is mandatory to prove such fact – Further, pleadings of earlier suit should be proved: *Hardas Vs. Dharmoo (Died) Through LRs. Ramprasad, I.L.R. (2019) M.P. 1454*

– Order 2 Rule 2 – Second Suit – Grounds – Maintainability – Second suit claiming possession on basis of decree passed in earlier suit – Held – Judgment of earlier suit shows that appellant/plaintiff was already in possession, thus there was no cause of action for seeking possession in earlier suit – Second suit for possession maintainable and not barred under Order 2 Rule 2 CPC – Appeal allowed: *Hardas Vs. Dharmoo (Died) Through LRs. Ramprasad, I.L.R. (2019) M.P. 1454*

– Order 2 Rule 2, Order 6 Rule 16 & Order 7 Rule 11 – In second suit on same cause of action, on application filed under Order 7 Rule 11 C.P.C., trial Court decided objection under Order 2 Rule 2 and directed plaintiff under Order 6 Rule 16 C.P.C. to delete/omit the relief clause in respect of property which was not part of previous suit – Held – There is no provision of partial rejection of plaint in C.P.C. – In present case, issues not framed yet, defendants are yet to file written statement where they are free to raise the objection in respect of Order 2 Rule 2 C.P.C. in written statement, which shall be decided after framing of issues – Impugned order wrongly passed while deciding application under Order 7 Rule 11 C.P.C. and hence set aside – Petition allowed: *Sunita Sharma (Smt.) Vs. Deepak Sharma, I.L.R. (2018) M.P. 2435*

– Order 2 Rule 2(3) – Maintainability of Suit – Held – Object of provision is not frustrated because there is no multiplicity of suit pending, vexing defendants in multiple litigation: *Shubhalaya Villa (M/s) Vs. Vishandas Parwani, I.L.R. (2020) M.P. 1704*

– Order 2 Rule 2(3) & Order 7 Rule 11 – Maintainability of Suit – Held – Objections under Order 2 Rule 2(3) are technical bar and do not fall under Order 7

Rule 11 CPC and can only be considered while deciding issues on merits during trial – Plaint cannot be rejected at threshold while deciding application under Order 7 Rule 11 CPC because such application is decided on basis of averments made in plaint and not the defence taken in written statement: *Shubhalaya Villa (M/s) Vs. Vishandas Parwani, I.L.R. (2020) M.P. 1704*

– Order 2 Rule 3 – Joinder of Cause of Action – Held – This Court earlier concluded that when suit property are purchased by separate persons by separate deed, then suit by all of them for eviction of whole property is maintainable: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Order 3 Rule 1 and Powers-of-Attorney Act (7 of 1882), Section 1A – Power to Cross-examination – Held – Plaintiff can give power of Attorney to an expert to cross-examine another expert witness of defendant: *Vinita Shukla (Smt.) Vs. Kamta Prasad, I.L.R. (2020) M.P. 447*

– Order 3 Rule 1 & 2 – Appearance by recognized agent or pleader – A person holding unregistered general power of attorney can appear and act on behalf of a party to the proceeding in a Court: *Sharmila Tagore (Smt.) Vs. Azam Hasan Khan, I.L.R. (2016) M.P. 770*

– Order 4 Rules 1, 2 & 3 – See – Succession Act, Indian, 1925, Section 295: *Sarla Jaiswal Vs. Jaikishore Jaiswal, I.L.R. (2018) M.P. *109*

– Order 6 Rule 16 – Striking out pleadings of the Election Petition – Appellant was one of the star campaigners for the said election for the State of Madhya Pradesh – Therefore, he was required to campaign for his political party, not only in his constituency but also in other constituencies of the State – In the absence of any allegation that the appellant used the helicopter for travelling within 76-Churhat constituency for the purpose of campaigning, the expenditure incurred on that account, cannot be included in the election expenditure of the appellant – Therefore, Paragraph 14M of the election petition is liable to be struck off: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2017) M.P. 10 (SC)*

SYNOPSIS : Order 6 Rule 17

1.	**Appellate Stage/Subsequent Events**	**2.**	**Consequential Relief**
3.	**Delay**	**4.**	**Jurisdiction of Court**
5.	**Plaint & Written Statement**	**6.**	**Stage of Trial**
7.	**Miscellaneous**		

1. Appellate Stage/Subsequent Events

– Order 6 Rule 17 and Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) and 12(1)(f) – Subsequent Event – Respondent/Plaintiff filed a suit for eviction against Appellant/Defendant which was decreed u/S 12(1)(c) and 12(1)(f) of the Act of 1961 – In first appeal, decree was upheld u/S 12(1)(f) of the Act of 1961 – Second Appeal – Appellant filed an application under Order 6 Rule 17 C.P.C. seeking amendment on the ground of subsequent event – Consideration of amendment application before admission – Held – The question whether party should or should not be allowed to amend its pleadings at appellate stage, cannot be decided unless the appeal is first heard on merits – Consideration of such interim application before admission stage is not proper – Application for amendment shall be considered at the time of final hearing of appeal on merits: *Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs., I.L.R. (2017) M.P. 1457*

2. Consequential Relief

– Order 6 Rule 17 – Scope – "Consequential Relief" – Held – By seeking amendment, petitioner has not tried to set up a new case, only consequential relief was sought, which was already in substance in the suit in another form – Cross examination of plaintiff witness has not yet started, no prejudice would be caused to respondents, if amendment is allowed, otherwise suit may be dismissed as non maintainable in absence of consequential relief – Amendment application allowed: *Vallabh Electronics (M/s) Vs. Branch Manager United Bank of India, I.L.R. (2020) M.P. *10*

3. Delay

– Order 6 Rule 17 – Amendment – Delay – If the application has been filed after the beginning of the trial and the desired amendment was very well in the knowledge of the petitioner on the date of filing the written statement, the same could not be allowed by the trial Court – Petition dismissed: *Swati Nagpure Vs. Smt. Kamla Nagpure, I.L.R. (2016) M.P. 41*

– Order 6 Rule 17 – Delay – Amendment application filed after three years of filing of suit – Held – Mere delay cannot be a ground for rejection of the application unless and until a serious prejudice is caused to defendants: *Vallabh Electronics (M/s) Vs. Branch Manager United Bank of India, I.L.R. (2020) M.P. *10*

4. Jurisdiction of Court

– Order 6 Rule 17 – Amendment – Amendment application filed by plaintiff/ respondent was allowed – Initially suit was filed for grant of injunction on the ground

of ownership & possession – During pendency of suit plaintiff/respondent was dispossessed from the suit property – Amendment application seeking relief of possession filed by plaintiff/respondent was allowed by Trial Court – Held – No jurisdictional error by Trial Court – Question of possession shall be decided on the basis of evidence – Petition has no merits hereby dismissed: *Mohanlal Vs. Shravan Kumar, I.L.R. (2017) M.P. *8*

– Order 6 Rule 17 – Amendment – Application for amendment is filed by a party after commencement of trial –Held – The trial court must address upon the issue as regards existence of jurisdictional facts – Only after recording its satisfaction, trial court shall move further to decide the application on merits: *Manoj Jain Vs. Smt. Suman Goyal, I.L.R. (2016) M.P. 396*

5. Plaint & Written Statement

– Order 6 Rule 17 – Amendment in Written Statement/Plaint – Principle – Held – Apex Court concluded that amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle – Courts should be more liberal in case of an amendment of written statement, than that of a plaint – Application for amendment in written statement filed by petitioner/defendant allowed: *Ajit Singh Vs. Devesh Pratap Singh, I.L.R. (2017) M.P. *131*

– Order 6 Rule 17 – Amendment in Written Statement – Reason for Delay – Petition against rejection of application under Order 6 Rule 17 filed by the petitioner/ defendant to amend the written statement – Held – In the instant case, plaintiff's evidence is already complete and closed – Reason assigned by defendant in the application for amendment was that the proposed amended facts came to mind only while preparing affidavit for evidence – Such reason does not qualify the definition of "due diligence" as provided under the proviso of Order 6 Rule 17 CPC – Further held – Even though amendment applications for the plaint and the written statement are to be considered on different yardsticks but still, the rigor of the proviso to Rule 17 of Order 6 CPC cannot be diluted even in those cases where amendment in written statement is being sought and it is necessary to see if the trial has already commenced or that defendant has made out a case that inspite of due diligence, defendant could not have raised the matter before the commencement of trial – No illegality or jurisdictional error in the impugned order – Petition dismissed: *Mohanlal Vs. Smt. Maya, I.L.R. (2018) M.P. 717*

6. Stage of Trial

– Order 6 Rule 17 – Amendment – Held – Since parties have not yet filed their documentary evidence in the suit therefore trial has not commenced – Application

for amendment allowed: *Ganesh Prasad Ojha Vs. Shri Hariram Ji Ojha, I.L.R. (2017) M.P. *4*

7. Miscellaneous

– Order 6 Rule 17 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) & 12(1)(f): *Madhav Gogia Vs. Smt. K. Fatima Khursheed, I.L.R. (2017) M.P. 1147*

– Order 6 Rule 17 – See – Criminal Procedure Code, 1973, Section 125: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

– Order 6 Rule 17, Order 7 Rule 14(3) & Order 9 Rule 13 – Ex-Parte Proceedings – Fresh Notice – Trial Court proceeded *ex-parte* against appellants/ defendants – Subsequently, plaintiff filed application under Order 6 Rule 17 and Order 7 Rule 14(3) C.P.C. which was allowed and thereafter *ex-parte* judgment and decree was passed – Held – Appellants were not put to notice before allowing such applications – In cases where after *ex-parte* proceedings, amendment applications etc. are filed, Court is required to issue fresh notice to the other side – Application under Order 9 Rule 13 allowed with cost – Appeals allowed: *Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies, I.L.R. (2017) M.P. 3015*

– Order 6 Rule 17, Proviso – Amendment in Written Statement – Amendment in Code – Effect – Held – Proviso to Order 6 Rule 17 was added vide CPC (Amendment) Act, 2002 and thus would not be applicable to civil suits which are filed prior to coming into force of the amendment Act of 2002 – In present case, suit was filed in 1981 thus proviso will not apply to the suit – Petition allowed: *Ajit Singh Vs. Devesh Pratap Singh, I.L.R. (2017) M.P. *131*

SYNOPSIS : Order 7 Rule 11

1. Ad Valorem Court Fees

– Order 7 Rule 11 and Court Fees Act (7 of 1870), Section 7(iv)(c) – Ad Valorem Court Fees – Respondent No. 1/Plaintiff filed a civil suit for declaring the gift deeds executed by her in favour of her daughter (petitioner) as null and void, on

the ground that on the pretext of Will, gift deeds were fraudulently got signed by her daughter – Petitioner/daughter filed an application under Order 7 Rule 11 CPC on the ground that ad valorem court fees has not been paid – Application dismissed – Challenge to – Held – Perusal of gift deeds reveal that they are voidable in nature and cannot be said to be void ab initio – In the plaint also it was not denied by plaintiff that those gift deeds were not signed by her – Plaintiff liable to pay *ad valorem* court fees – Impugned order set aside – Petition allowed: *Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai, I.L.R. (2018) M.P. *52*

– Order 7 Rule 11 and Court Fees Act (7 of 1870), Article 17(iii) of Second Schedule – Ad-valorem Court Fee – Revision against dismissal of application filed by Applicant/defendant under Order 7 Rule 11 CPC regarding ad-valorem court fee – Plaintiff filed a suit for possession of disputed land and for perpetual injunction against applicant/defendant – Trial Court dismissed the application/objection of the defendant on the ground that Plaintiff is not a party in subsequent sale deed, therefore he is not required to pay ad-valorem court fee – Held – For purpose of determination of court fee, only allegation made in the plaint are relevant and the defence raised in the written statement cannot be looked into – Plaintiff has sought a relief of declaration that subsequent sale deed is null and void and not binding on him – Plaintiff is not a party or executant in the said subsequent sale deed - Court fee has to be determined as per Article 17(iii) of Second Schedule of Court Fees Act – Further held – Whether earlier sale deed was cancelled or not binding upon plaintiff is a matter of evidence – No illegality in the impugned order – Revision dismissed: *Vinod Kumar Sharma Vs. Satya Narayan Tiwari, I.L.R. (2018) M.P. 190*

2. Alternate Remedy

– Order 7 Rule 11 and Micro, Small and Medium Enterprises Development Act (27 of 2006), Sections 15, 16, 17, 18 & 24 – Rejection of Plaint — Alternate remedy – Application for rejection of plaint by defendant – Whether in the light of provisions as contained in Sections 18 & 24 of the Act of 2006 relating to availability of alternate remedy for reference of dispute to Micro & Small Enterprises Facilitation Council, the Jurisdiction of the Civil Court is barred – Held – Yes, as per Section 18 (1) & Section 24 of the Act of 2006 the plaintiff has an alternate remedy of referring the dispute to the Facilitation Council and without availing that remedy the plaintiff cannot approach directly to the Civil Court in Civil Suit – Trial Court committed error in rejecting application under Order 7 Rule 11 of C.P.C. – Revision allowed and the suit is dismissed: *C.M.D. (EZ) MPPKVVCL Vs. Sharad Oshwal, I.L.R. (2016) M.P. 1795*

3. Cause of Action & Limitation

– Order 7 Rule 11 – Cause of Action – Professional Misconduct of Advocate – Held – It is within exclusive domain of bar Council to consider question of professional misconduct – Civil Court can neither consider/examine as to whether any action of a Lawyer is a misconduct nor can pass mandatory injunction against Bar Council to initiate disciplinary proceedings against a Lawyer – No cause of action disclosed against applicant/defendant – Suit barred by law – Impugned order set aside – Suit against applicant dismissed with cost of Rs. 5000 – Revision allowed: *Prakash Chandra Chandil Vs. Arun Singhal, I.L.R. (2020) M.P. *27*

– Order 7 Rule 11 – Question of Limitation – Revision against the dismissal of application filed by Petitioner/ defendant under Order 7 Rule 11 C.P.C. – Held – Suit was filed on 20.11.12 and it has been specifically pleaded that cause of action arose on 06.10.12 – Question of limitation is a mixed question of facts and law and truthfulness or otherwise can be decided only after recording of evidence – Whether any party was having knowledge of any particular fact at a particular time or not, could not be decided without recording evidence of parties – Supreme Court has held, that while exercising powers under Order 7 Rule 11 C.P.C., only averments of plaint has to be read as a whole and at that stage stand of defendants in written statement or in application for rejection of plaint is immaterial – Trial Court rightly dismissed the application – Revision dismissed: *Mahesh Chandra Giroti Vs. Rahul Dev Chourasia, I.L.R. (2017) M.P. *95*

– Order 7 Rule 11 – Suit Barred by Time – Cause of Action – Pleading & Evidence – Held – Cause of action as pleaded in plaint is correct or not, cannot be decided at the threshold and being a question of fact, can only be determined after recording of evidence – Court below holding the suit as barred by time, is without any foundation or reasoning and based on presumption – Court below erred in deciding such issue while deciding application under Order 7 Rule 11 – Impugned order set aside – Appeal allowed: *Shubhalaya Villa (M/s) Vs. Vishandas Parwani, I.L.R. (2020) M.P. 1704*

4. Non-Joinder of Necessary Party

– Order 7 Rule 11 – Effect of non-joinder of necessary party – Suit for cancellation of sale deed cannot be dismissed only on the ground of non-joinder of necessary party – The plaintiffs are at liberty to implead the necessary parties if they so desire – Even after an opportunity is granted to the applicants for impleading necessary parties in the suit and parties are not impleaded then only the suit can be dismissed for non-joinder of necessary parties: *Reva Associates (M/s.) Vs. Sarju Bai, I.L.R. (2016) M.P. 3367*

5. Res Judicata

– Order 7 Rule 11 – Res Judicata – Scope and Applicability – Held – If at an earlier stage of same suit, identical application had been moved and same had been rejected then subsequent application under same provision of law will not be maintainable being defeated by principle of *res judicata* – Further held – If grounds mentioned in the previous and subsequent applications under Order 7 Rule 11 C.P.C. are different then also subsequent application would be barred by principle of constructive res judicata, as ground raised in the subsequent application was available at the time when previous/first application under Order 7 Rule 11 was moved: *Mannu Raje Trust Vs. Mohd. Azad, I.L.R. (2017) M.P. *81*

– Order 7 Rule 11 – Second Application – Subsequent Event/Changed Circumstances – Res Judicata – Held – The technical principle of res judicata would not be operative while deciding subsequent application as the circumstances which is made in subsequent application was not available at the time when previous application was decided – Revision allowed – Matter remanded back to trial Court for decision afresh on merits: *Dilip Buildcon Ltd. (M/s.) Vs. Ghyanshyam Das Dwivedi, I.L.R. (2018) M.P. 2502*

6. Scope & Jurisdiction of Court

– Order 7 Rule 11 – While deciding application under Order 7 Rule 11 CPC, the trial Court is not required to examine anything beyond the plaint averments – As per plaint averments itself plaintiff was given possession in the capacity of an employee – No right to remain or continue in possession after cessation of service is shown in plaint averments – A caretaker, agent or employee does not have any right or interest to continue in accommodation – The Court below was required to examine whether there exists any triable cause of action, right or legal character – For this purpose, no evidence is required to be lead/recorded – The Court below was not justified in rejecting the application: *Jai Vilas Parisar Vs. Alok Kumar Hardatt, I.L.R. (2016) M.P. 1487*

– Order 7 Rule 11 – Application is required to be decided in the light of the pleadings contained in the plaint – Jurisdiction of the civil court is not barred when the suit is based on the ground that the order under challenge is a nullity: *Prakash Vs. Manager, Smriti Nagarik Sahakari Bank, I.L.R. (2017) M.P. 344*

– Order 7 Rule 11 – Scope and Jurisdiction – Law regarding scope and jurisdiction of the Court while dealing with application under Order 7 Rule 11 is no more res integra – Court is only required to look into the plaint averments to decide whether suit is barred by law under Order 7 Rule 11 CPC: *Ahilya Vedaant Education Welfare Society Vs. K. Vedaant Education Society, I.L.R. (2018) M.P. 726*

– Order 7 Rule 11 – Scope – Held – Application filed under Order 7 Rule 11 is to be considered on the basis of pleadings made by plaintiff in the suit: *Ankur Dubey Vs. Jayshree Pandey, I.L.R. (2019) M.P. 2106*

– Order 7 Rule 11 and Benami Transactions (Prohibition) Act, (45 of 1988), Section 2(a), 2(c) & 4 – Benami Property – Right of such Property – Revision against dismissal of application filed by Petitioner/defendant under Order 7 Rule 11 – Plea of plaintiff in respect of the disputed property is, that the same was purchased in the name of Sheela Bai for which consideration was paid by the husband of plaintiff – Declaration of title and injunction has been sought by the plaintiff while claiming her right in the property – Held – As per Section 2(a) of the Act of 1988, such transaction would fall within the purview of "Benami Transaction" and any such immovable property purchased would be the benami property as specified u/S 2(c) of the Act – Section 4 of the Act of 1988 prohibits the right to recover such benami property – Order passed by Trial Court is set aside – Application filed by petitioner/defendant under Order 7 Rule 11 is allowed and suit by plaintiff is hereby rejected – Revision allowed: *Sita Bai (Smt.) Vs. Smt. Sadda Bai, I.L.R. (2018) M.P. 193*

7. Miscellaneous

– Order 7 Rule 11 – See – Arbitration and Conciliation Act, 1996, Section 45: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

– Order 7 Rule 11 – See – Court Fees Act, 1870, Section 7(iv)(c): *Vijay Kumar Vs. Vinay Kumar, I.L.R. (2016) M.P. 1067*

– Order 7 Rule 11 – See – Municipal Corporation Act, M.P., 1956, Section 401: *Dilip Kumar Rahira Vs. Santa Kanwarram Griha Nirman Sahakari Samiti, I.L.R. (2018) M.P. *51*

– Order 7 Rule 11 – See – Municipalities Act, M.P., 1961, Sections 20(3)(ii) & 26: *Kanchan Khattar (Smt.) Vs. Rakesh Dardwanshi, I.L.R. (2016) M.P. 1504*

– Order 7 Rule 11 – See – Partnership Act, 1932, Section 69(2): *Nirmala Devi (Smt.) Vs. Smt. Bharti Devi, I.L.R. (2017) M.P. *129*

– Order 7 Rule 11 – See – Partnership Act, 1932, Section 69(2) & 69(3): *Abdul Saleem Vs. Shamim Ahmed, I.L.R. (2017) M.P. 1485*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Section 81 & 126: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Section 83 & 87: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2020) M.P. 1345*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Proviso to Section 83(1): *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Section 83(1)(a): *Suresh Pachouri Vs. Shri Surendra Patwa, I.L.R. (2020) M.P. 413*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Section 83(1)(a) & 86: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Order 7 Rule 11 – See – Representation of the People Act, 1951, Sections 83(1)(a), 86, 100(1) & 123: *Radheshyam Darsheema Vs. Kunwar Vijay Shah, I.L.R. (2020) M.P. 2139*

– Order 7 Rule 11 – See – Specific Relief Act, 1963, Section 41: *Ganpat Vs. Ashwani Kumar Singh, I.L.R. (2018) M.P. *6*

• **– Order 7 Rule 11, Order 1 Rule 3B and Section 80(1) & (4)** – Agricultural Land – Notice – Revision against dismissal of application filed by the petitioner/ defendant under Order 7 Rule 11 CPC – Suit for declaration and permanent injunction against the petitioner – Held – As per State Amendment in Section 80 CPC by way of Sub-section 4, the suit filed for declaration of a title in respect of agricultural land is not liable to be dismissed for want of notice u/S 80(1) because as per Order 1 Rule 3B (State Amendment), the State Government is a necessary party in a suit or proceeding for declaration of title or any right over agricultural land – Only requirement is that State Government must be the defendant or non-applicant in the suit and a notice u/S 80(1) CPC is not mandatory – No error in the impugned order – Revision dismissed: *Omprakash Vs. Pratap Singh, I.L.R. (2018) M.P. 186*

– Order 7 Rule 11 & Order 6 Rule 16 – See – Representation of the People Act, 1951, Sections 33(A), 81(3), 86 & 100(1)(d)(i): *Rasal Singh Vs. The Election Commission of India, I.L.R. (2016) M.P. 1411*

– Order 7 Rule 11 & 13 – Subsequent Suit on Same Cause of Action – Maintainability – Held – If plaint is rejected on any grounds mentioned under Order 7 Rule 11 CPC, plaintiff can file subsequent suit on same cause of action as per provisions of Order 7 Rule 13 CPC – Provision(Statute) under Order 7 Rule 13 has not provided any distinction – Court cannot re-write the provision and carve out a distinction which is not available under the provision, making it redundant and equivocal – Impugned order set aside – Appeal allowed: *Shubhalaya Villa (M/s) Vs. Vishandas Parwani, I.L.R. (2020) M.P. 1704*

– Order 7 Rule 11(a) – See – Representation of the People Act, 1951, Sections 81, 86, 100 & 123: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2020) M.P. 1345*

– Order 7 Rule 11(d) – Preliminary issue – When from the averment of the plaint it is clear that the suit is barred by any law, then plaint can be rejected – But when disputed question in relation to the issue of limitation is involved, the Court cannot reject the plaint: *Pramod Kumar Vs. Saiyad Rajiy Sultan, I.L.R. (2016) M.P. 850*

– Order 7 Rule 11(d) – See – Limitation Act, 1963, Article 54: *Himmatlal Vs. M/s. Rajratan Concept, I.L.R. (2018) M.P. 2035*

– Order 7 Rule 14(3) and Evidence Act (1 of 1872), Section 164 – Documents not produced by plaintiff inspite of notice by Court – Held – Bar contained u/S 164 of Evidence Act is not absolute – Still trial Court, exercising discretion u/S 164 coupled with discretion under order 7 Rule 14(3) CPC can grant leave to plaintiff to produce documents at later stage – Issues not framed by the Court, thus no prejudice would be caused to respondents, if documents are produced on record – Petition allowed with cost of Rs. 5000: *Sudheer Jain (Dr.) Vs. Sunil Modi, I.L.R. (2019) M.P. *61*

– Order 8 Rule 1 (Proviso), Section 151 – Written Statement – Right closed to file Written Statement on record – Application u/S 151 for taking Written Statement on record was dismissed by the Trial Court – Defendants are of rural background with little knowledge of law – Suit was never listed for filing of Written Statement between 22.03.2005 to 08.02.2006 – Held – Reason that the suit was never listed for filing of Written Statement cannot be countenanced in law, as the defendants are statutorily obliged to file Written Statement within 30 days or within extendable period of 90 days from the date of service of summons, and it does not require any separate order of the Trial Court – As the defendants are of rural background and not aware with technicalities of law, they require sympathetic consideration – Defendants were granted opportunity to file Written Statement within 30 days subject to paying cost of Rs. 5000/- to the plaintiff – In default of the same, the order will become ineffective and the Trial Court shall proceed with the suit – Petition allowed: *Pradeep Kumar Vs. Mahila Rambeti, I.L.R. (2016) M.P. 2974*

– Order 8 Rule 1 – Proviso – Written Statement – Whether the provisions of Order 8 Rule 1 of C.P.C. relating to filing of Written Statement within 30 days or within extended period of 90 days from the date of service of summons is directory or mandatory – Held – The proviso to Order 8 Rule 1 of C.P.C. ostensibly appears to be mandatory, but it is directory provided the defendants demonstrate reasonable cause for the delay: *Pradeep Kumar Vs. Mahila Rambeti, I.L.R. (2016) M.P. 2974*

– Order 8 Rule 1 – Written Statement – Time Limit – Held – Once a party to suit has been served, it is for that party only to file its written statement within the prescribed time limit of 30 days as provided under Order 8 Rule 1 and should not wait for the Court to provide a last opportunity: *Radharani (Smt.) Vs. Kamlesh Kumar Kathraya, I.L.R. (2018) M.P. 1408*

– Order 8 Rule 6-A – Counter Claim – Filing – Purpose of – To avoid multiplicity of judicial proceedings – All disputes between same parties being decided in the course of same proceedings: *Friends School Governing Board, India Vs. Municipal Council, I.L.R. (2017) M.P. 332*

– Order 8 Rule 6-A – Counter Claim – Limitation – In a suit, Written Statement filed by defendant on 20.08.14 – Plaintiff's evidence closed on 22.04.17 – No defence evidence produced by defendant instead he filed a counter claim on 06.05.17 which was accepted vide impugned order – Plaintiff filed application under Order 7 Rule 11 CPC which was dismissed – Challenge to – Held – Counter claim filed on 06.05.17 i.e. after Written Statement was filed on 20.08.14, which could not have been allowed by trial Court as the same falls outside the purview of Order 8 Rule 6-A CPC – Trial Court misinterpreted and misread the word "defence" to be "evidence" in Order 8 Rule 6-A CPC – Impugned order set aside – Trial Court directed to proceed excluding the counter claim – Petition allowed: *Sainik Mining Allied Services Ltd. (M/s.) Vs. Northern Coal Fields Ltd., I.L.R. (2018) M.P. 1925*

– Order 8 Rule 6-A – Counter Claim – Petitioner/plaintiff filed a suit for permanent injunction – Written Statement filed – Framing of issues – Evidence on affidavit filed by plaintiff – Respondent No. 1 filed an application for amendment in the written statement so as to seek declaration of title by way of counter claim on the basis of adverse possession in favour of him – Amendment application allowed by the trial Court on the ground that in the counter claim, position of defendant is like a plaintiff and he is entitled to amend the written statement and raise the counter claim – Held – As the issues have already been framed and the trial has also commenced, so the counter claim which is not contained in the original written statement may be refused and the plea of adverse possession in the counter claim cannot be taken as a weapon of offence and it can be taken only as shield to defence – Trial Court to decide suit on basis of original pleadings and issues framed by it – Petition allowed: *Friends School Governing Board, India Vs. Municipal Council, I.L.R. (2017) M.P. 332*

– Order 8 Rule 6-A – Counter Claim – Suit for possession and mesne profits – Written statement filed – Subsequently, defendants filed an application under Order 6 Rule 17 of C.P.C. for setting up counter claim against the plaintiffs and other defendants which was rejected – A Petition was filed by defendants which was withdrawn with liberty to set up afresh counter claim, only against the plaintiffs –

Fresh amendment application was filed in this regard and the same was allowed – Present petition by plaintiffs on the ground that whether a defendant has unfettered right to file counter claim at any stage after filing of the written statement – Held – The defendant as of right can set up a counter claim in the written statement itself but the defendant has no unfettered right to file counter claim after filing of written statement and subsequently it may be preferred by way of amendment application but subject to leave of the court and a counter claim can also be filed by way of subsequent pleading as per Order 8 Rule 9 of C.P.C. – Impugned order set aside – Trial Court is directed to decide the amendment application afresh as per the law laid down by the Apex Court: *Sudershan Tiwari (Smt.) Vs. Sheo Prasad Tiwari Trust, I.L.R. (2017) M.P. 339*

– Order 8 Rule 6-A – Counter Claim – Whether a counter claim can be directed against a co-defendant alongwith the plaintiff or solely against a co-defendant only – Held – A counter claim can be directed against a co-defendant alongwith the plaintiff, but a counter claim directed solely against the co-defendant is not maintainable: *Sudershan Tiwari (Smt.) Vs. Sheo Prasad Tiwari Trust, I.L.R. (2017) M.P. 339*

– Order 8 Rule 6-A – Term "defence" – The word "defence" in Rule-6-A connotes to written statement only and cannot be said to be extended to stage of leading evidence in support of such written statement: *Sainik Mining Allied Services Ltd. (M/s.) Vs. Northern Coal Fields Ltd., I.L.R. (2018) M.P. 1925*

– Order 9 Rule 2 – Word "May" - Held – The use of word "may" in Order 9 Rule 2 CPC suggest that it is not mandatory in all circumstances that suit must be dismissed by trial Court: *Ram Kishore Tiwari Vs. Chhathi Lal Tiwari, I.L.R. (2019) M.P. 1842*

– Order 9 Rule 2 & Rule 4 – Non-Payment of Process Fee – Dismissal & Restoration of Suit – Plaintiff's suit dismissed for default of payment of process fee – Petitioner/plaintiff filed restoration application on very next day – Held – Trial Court must use its discretion leniently and is not required to minutely evaluate the evidence so as to separate chaff from grain or to expect the plaintiff to prove his case for restoration of plaint beyond reasonable doubt – No inordinate delay in filing application – Impugned order set aside – Suit restored – Petition allowed: *Ram Kishore Tiwari Vs. Chhathi Lal Tiwari, I.L.R. (2019) M.P. 1842*

– Order 9 Rule 2 & Rule 4 – Purpose & Intention – Held – Primary purpose and intention of Court must be to decide the dispute on merits rather than to ensure that case be dismissed on some technical ground at the threshold only: *Ram Kishore Tiwari Vs. Chhathi Lal Tiwari, I.L.R. (2019) M.P. 1842*

– Order 9 Rule 7 – Petition filed against rejection of application under Order 9 Rule 7, as not maintainable – Held – Provision attracted when court has adjourned the hearing of suit ex-parte and application is filed before such hearing – In the present case where the final arguments are heard and matter is reserved for judgment, aforesaid provision will not be attracted because in such an eventuality the case is not adjourned for hearing – Trial court has not committed any error – Petition dismissed: *Jaitun Bi (Smt.) Vs. Mohd. Ameen, I.L.R. (2017) M.P. 335*

– Order 9 Rule 7 – Setting aside of ex-parte proceedings – Trial Court not only refused to set aside ex-parte proceedings but did not allow the defendant to participate in subsequent proceedings – Held – Unless sufficient cause is shown, the trial Court is not bound to set aside ex-parte proceedings and not bound to start the proceedings afresh – However, defendants cannot be deprived to participate in further proceedings – Petition allowed: *Haridas Kacchi Vs. Jay Krishan Puranik, I.L.R. (2016) M.P. 39*

– Order 9 Rule 8 and Representation of the People Act (43 of 1951), Section 87 – If there is no provision in the Act to the contrary, provisions of C.P.C. 1908 would apply – Election petition dismissed in default: *Peeyush Sharma Vs. Vashodhra Raje Scindhia, I.L.R. (2016) M.P. 1984*

– Order 9 Rule 13 – Application for setting aside *ex parte* judgment and decree – Process server tried to serve the summons on the applicant, but the same was allegedly returned unserved on account of rain fall – No witness had signed on the report of the process server – No effective service of summons – Application allowed: *Raghuveer Vs. Hari Prasad, I.L.R. (2017) M.P. 148*

– Order 9 Rule 13 – Maintainability of Application – Suit decreed against respondent No.2/defendant No.1 – He filed an appeal where applicant/defendant No.2 was not made a party – Appeal was also dismissed – Applicant filed an application under Order 9 Rule 13 CPC which was dismissed – Challenge to – Held –Trial Court passed a decree against respondent No.2/defendant No. 1 and not against the applicant – As per the provision,a defendant against whom an *ex-parte* decree is passed may apply to Court for setting it aside – Present application not maintainable – Revision dismissed: *Sangam Sahakari Grih Nirman Samiti Mydt. Vs. Smt. Jethibai Purushwani, I.L.R. (2017) M.P. 2548*

– Order 9 Rule 13 – See – Payment of Wages Act, 1936, Sections 15(2) & 17(1A): *Saabir & Brothers Vs. Rajesh Sen, I.L.R. (2016) M.P. 786*

– Order 9 Rule 13 – Setting aside ex-parte decree against the defendants – No notice were received by the appellants – Since proper opportunity of hearing has not been given to the appellants, ex-parte judgment would be against the principles of

natural justice – Sufficient cause is to be made out, to do substantial justice – Ex-parte award is set aside subject to condition that the appellant shall deposit 50% of the awarded amount in the Trial Court, and Rs. 5,000/- cost to be paid to claimant: *Dharmendra Singh Vs. Nagga Ji, I.L.R. (2016) M.P. 549*

– Order 9 Rule 13 – Setting aside Ex-parte Decree – Ground – Held – Mere irregularity in service of notice/ summons shall not be a ground to set aside an *ex-parte* decree – However, knowledge of pendency of suit is not sufficient to attract 2nd proviso of Order 9 Rule 13 CPC, but knowledge of date of hearing is important: *Jaipal Singh Vs. State of M.P., I.L.R. (2019) M.P. *71*

– Order 9 Rule 13 Second Proviso – Setting Aside of Ex-parte Decree – Ground – Held – *Ex-parte* decree cannot be set aside on mere allegation of irregularity of service of summons – In present case, record shows that summons were duly served on correct address of the applicant society: *Sangam Sahakari Grih Nirman Samiti Mydt. Vs. Smt. Jethibai Purushwani, I.L.R. (2017) M.P. 2548*

– Order 9 Rule 13 & Section 151 – Stay of execution of Ex-parte Decree – Provision – Ex-parte judgment and decree against petitioner – Stay of execution prayed by petitioner which was rejected on ground that there is no such provision in CPC – Held – Petitioner submitted that this Court has earlier concluded that in absence of any specific provision for staying execution proceedings, application u/S 151 is applicable/maintainable – Execution proceedings stayed and trial Court directed to dispose of the application under order 9 Rule 13 CPC expeditiously – Petition allowed: *Mukesh Kumar Vs. Smt. Mamta Bai, I.L.R. (2019) M.P. *59*

– Order 9 Rule 13 and Order 5 Rule 17 & 20 – Setting Aside Ex-parte Decree – Service of Summons – Substituted Service – Held – Trial Court straight-a-way ordered for substituted service through publication without taking steps for service of summons by ordinary way as contemplated under Order 5 Rules 12, 15 & 17 CPC – Before ordering for substituted service, Court was under statutory obligation to record reasons germane for justification of compliance of Order 5 Rule 20 CPC which was not done in present case, thus service of summons is not complete – Impugned order passed in hot haste and slip shod manner and is thus set aside – Further, ex-parte judgment and decree passed by trial Court is prejudicial and detrimental to rights and interest of defendants/appellants and is set aside – Appeal allowed: *Indore Holding Pvt. Ltd. (M/s.) Vs. Chimanlal, I.L.R. (2019) M.P. 415*

– Order 11 Rules 1 & 2, Order 14 Rule 3(b) – Interrogatories – Petitioner's application under Order 11 Rules 1 & 4 rejected in a suit for possession filed by her, on the ground that suit cannot be decided on the basis of interrogatories – Held – Issues can be framed on the basis of interrogatories – Trial Court was

required to examine whether the interrogatories have reasonable close connection with "matter in question" – Order set aside – Matter remanded back for rehearing: *Poonam Mansharamani (Smt.) Vs. Ajit Mansharamani, I.L.R. (2016) M.P. 2999*

– Order 11 Rule 12 & 13 – Nomenclature of Document – Applicant's contention that affidavit is captioned as one under Order 11 Rule 13 CPC which cannot be given colour of one under Order 11 Rule 12 CPC – Held – Nomenclature of document is of no significance and contents of the document are to be considered to ascertain the nature of the same: *Durgesh Singh Vs. Narendra Kante, I.L.R. (2017) M.P. 2541*

– Order 11 Rule 12 & 21 – Eviction Suit – Declaration regarding Possession of Documents – Held – The party concerned, which is confronted with an application under Order 11 Rule 12 CPC is required to give declaration as to the status of possession of documents – In present case, respondent/plaintiff has accordingly declared the status regarding possession of document – Provision under Order 11 Rule 21 is not attracted for non-production of documents – Revision dismissed: *Durgesh Singh Vs. Narendra Kante, I.L.R. (2017) M.P. 2541*

– Order 12 Rule 3 and Evidence Act (1 of 1872), Section 114(g) – Identity – Adverse Inference – Held – Non-production of PAN card, school record or mark sheet, driving license despite notice issued under Order 12 Rule 3 CPC upon plaintiff, certainly leads to adverse inference against him in view of Section 114(g) of Evidence Act: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Order 12 Rule 6 – Judgment on Admission of Fact – Held – If the admission of other party is plain and unambiguous entitling the former to succeed, the provision should apply – Wherever there is a clear admission of fact in the face of which, it is impossible for the party making such admission to succeed, Order 12 Rule 6 can be pressed into service – The expression "otherwise" used in the provision makes it clear that such inference can be drawn from affidavits etc. also – Object of this provision is to enable a party to obtain speedy judgment – Further held – A partial decree based on admission made in written statement can also be passed provided admission is complete and sufficient – Impugned order is set aside – Matter remitted back to Trial Court to reconsider the application – Petition allowed: *Manoj Patel Vs. Smt. Sudha Jaiswal, I.L.R. (2018) M.P. 801*

– Order 14 Rule 2 – Issue of adverse possession – Mixed question of law and fact – It cannot be decided without taking evidence: *Pramod Kumar Vs. Saiyad Rajiy Sultan, I.L.R. (2016) M.P. 850*

– Order 14 Rule 2 – Preliminary Issue – Held – Issue of court fees is always liable to be decided as a preliminary issue because Court fees is payable in

advance at the time of filing of suit and appeal – There is no provision for payment of Court fees after adjudication of suit and appeal: *Badrilal (deceased) through L.Rs. Nirmala Vs. Akash, I.L.R. (2019) M.P. 1076*

– Order 14 Rule 2 – Preliminary issue – Issue of limitation – Is a mixed question of fact and law which can be decided only after framing issues and recording evidence: *Pramod Kumar Vs. Saiyad Rajiy Sultan, I.L.R. (2016) M.P. 850*

– Order 14 Rule 2 – Preliminary issue – Petition against rejection of an application under Order 14 Rule 2 of the Civil Procedure Code – Respondent/plaintiff filed a suit for recovery of money after lapse of three years – Petitioner filed an application for deciding the issue of limitation as a preliminary issue which was rejected by trial Court – Held – There is a factual dispute with regard to the actual date of cause of action which can be decided only after recording evidence – Trial court has not committed any error in rejecting the application – Petition dismissed: *Lokumal Nandwani Vs. Tumato Technology Pvt. Ltd., I.L.R. (2017) M.P. 601*

– Order 14 Rule 2 – Preliminary Issue – Question of Limitation – Trial Court refused to decide the question of limitation as preliminary issue – Held – While dismissing an earlier application filed under Order 7 Rule 11 by petitioner/defendant, trial Court held that question of limitation can be decided while deciding the entire matter on merits – This order has attained finality – Apex Court has concluded that question of limitation is a mixed question of law and fact and it is discretion of Court to decide issue based on law as preliminary issue – Court below took a plausible view and discretion was exercised in a permissible manner – Further, if the issue of limitation is decided at later point of time, no prejudice will be caused to petitioner – Petition dismissed: *Arun Kumar Brahmin Vs. Smt. Maanwati, I.L.R. (2019) M.P. 136*

– Order 14 Rule 5 – Consequential Relief – Stage of Suit – Held – Question with regard to maintainability of suit in absence of consequential relief cannot be allowed to be raised for the first time before the Appellate Court, but it should be raised at the earliest because if so required, the plaintiffs can amend the plaint: *Salim Khan @ Pappu Khan Vs. Shahjad Khan, I.L.R. (2020) M.P. 63*

– Order 14 Rule 5 – See – Registration Act, 1908, Section 47: *Sanjay Bhargava @ Raju Bhargava Vs. Smt. Munni Devi, I.L.R. (2019) M.P. 2534*

– Order 14 Rule 5 and Specific Relief Act (47 of 1963), Section 34 – Additional Issue – Absence of Consequential Relief of Possession – Maintainability of Suit – Held – When question of possession is in dispute, trial Court must frame additional issue regarding maintainability of suit in absence of consequential relief of possession – Petition allowed: *Salim Khan @ Pappu Khan Vs. Shahjad Khan, I.L.R. (2020) M.P. 63*

– Order 14 Rule 5 & Order 8 Rule 1(A)(3) and Succession Act, Indian (39 of 1925), Section 276 – Probate proceedings – Additional issues and production of documents – Issue relating to competence of the testator to execute a will – Whether the issue of a particular bequest being good or bad, or question of title can be examined in probate proceedings? – Held – No, as the Probate Court has limited jurisdiction, so the issue of particular bequest being good or bad, or the question of title cannot be examined in the probate proceedings, and the Probate Court is only concerned with the question as to whether the document put forward was the last "Will" and it was duly executed and atleast in accordance with law – Application under Order 14 Rule 5 and under Order 8 Rule 1(A)(3) of C.P.C. is rightly rejected – Petition dismissed: *Pratibha Mohta Vs. Sanjay Baori, I.L.R. (2016) M.P. *13*

– Order 17 Rule 1 – Adjournment – Grounds – Held – It is true that proviso to Order 17 Rule 1 provides that no adjournments can be granted after three opportunities but in the instant case, the trial court without considering the reasons mentioned in the application and without considering that proviso is directory in nature, dismissed the application – Trial Court is not precluded from taking into consideration the reasons for non-production of witness – Court below ought to have exercised inherent jurisdiction to grant opportunity to party for production of further evidence – In the instant case, case was concluded by the trial Court without recording evidence of the plaintiffs which amounts to miscarriage of justice – Judgment and decree passed by the court below is set aside – Application filed by plaintiff under Order 17 Rule 1 is allowed and plaintiff is allowed to lead further evidence – Matter remanded to trial Court to proceed from that stage – Appeal allowed: *R.K. Traders Vs. Hong Kong Bank, I.L.R. (2018) M.P. 522*

– Order 17 Rule 2 & 3 and Order 9 Rule 9 – Appeal – Maintainability – Suit for declaration and permanent injunction – At the stage of evidence, counsel of plaintiff filed application for adjournment which was rejected and suit was dismissed for want of evidence – First Appeal was also dismissed as not maintainable – Second Appeal – Held – Suit has not been dismissed in default but was dismissed in presence of counsel of plaintiff, such order would fall under Order 17 Rule 2 CPC – There is no adjudication of any issue between the party due to dismissal of suit, therefore First Appeal was not maintainable – Appellant has a remedy to file application under Order 9 Rule 9 CPC for setting aside dismissal – First Appeal rightly dismissed – Second appeal dismissed: *Rameshwar Vs. Govind, I.L.R. (2018) M.P. 1512*

– Order 17 Rule 2 & 3 and Order 9 Rule 9 – Applicability – In a civil suit for permanent injunction, counsel for plaintiff sought adjournment – Trial Court rejected the prayer and dismissed the suit for want of evidence – Plaintiff filed an application under Order 9 Rule 9 CPC which was also rejected – Plaintiff filed an appeal whereby

the same was allowed by the lower appellate Court – Challenge to – Held – When the suit was fixed for evidence/hearing, plaintiff was not present in person, his counsel appeared and sought adjournment because he was instructed by Plaintiff to ask for adjournment only and not to proceed with trial – In such circumstances, Rule 2 of Order 17 applies in case of dismissal of suit and against which application lies under Order 9 Rule 9 – No interference warranted – Revision dismissed: *Prathvi Raj Singh Vs. Krishan Gopal, I.L.R. (2017) M.P. 1219*

– Order 18 Rule 4 – Cross-examination of witness – Right to cross-examination was closed as counsel was engaged in another case – Court could have deferred cross-examination unless & until reason given for non availability of counsel was tainted with some oblique motive – Petition allowed: *Jabbar Khan Vs. Rauf Beg, I.L.R. (2016) M.P. 394*

– Order 18 Rule 4 – See – Evidence Act, 1872, Section 114 & 120: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

– Order 18 Rule 4 and Order 19 Rule 1 & 2, Evidence Act (1 of 1872), Sections 1 & 3 and General Clauses Act (10 of 1897), Section 3(3) – Exhibiting affidavit as document – Exhibition of affidavit as document is not permitted by the Court: *Kalusingh Vs. Smt. Nirmala, I.L.R. (2016) M.P. 450*

– Order 18 Rule 17 – Recall of Witness – Held – DW-1 in his deposition has made clear allegation against DW-6/petitioner – Co-defendant has a right to cross-examine the other defendant especially when one has made contrary/adverse statement to the interest of other – Impugned order set aside – Petition allowed: *Akhilesh Singh Vs. Krishan Bahadur Singh, I.L.R. (2020) M.P. 135*

– Order 18 Rule 17 – Recalling and Re-examination of Witness – Ground – Plaintiff/Respondent filed an application under Order 18 Rule 17 for recalling and re-examination of PW-1 (himself) for rectifying inadvertent mistake of mentioning the wrong Survey Number in his deposition – Application allowed – Challenge to – Held – During cross examination of plaintiff, he was been confronted thrice regarding correctness of survey number of the property in dispute but he categorically stated the survey number and was clear about the identity of the same – Thereafter, there was no occasion for the trial Court to allow application for recalling of witness especially when there was no inadvertent mistake or clerical mistake reflected from testimony – Attempt of plaintiff appears to be an act of filling up of lacuna in his deposition – Impugned order set aside – Petition allowed: *Kishori Lal Vs. Shivcharan, I.L.R. (2018) M.P. 1142*

– Order 19 Rule 1 & 2 and Order 39 Rule 1 & 2 – Cross Examination of Deponent – Discretionary Powers of Court – Suit for specific performance of contract

– Plaintiff and witnesses filed affidavit alongwith injunction application – Petitioner/ defendant filed application under Order 19 Rule 1 & 2 to cross examine the plaintiff – Application rejected by trial Court – Challenge to – Held – Where CPC permits the Court to decide certain matters on affidavit in general injunction matters, provisions of Order 19 Rule 1 & 2 do not apply and either party cannot lay any claim or urge the right of cross-examination of deponent – It is discretionary power of Court to call the deponent for cross examination, looking to the particular facts of the case – Trial Court finding the injunction application of plaintiff more creditworthy and bonafide, rightly exercised its discretion – Petition dismissed: *Shehzad Vs. Sohrab, I.L.R. (2018) M.P. 2181*

– Order 20 Rule 12(c)(iii) – Mesne Profit – Ascertainment – Held – If it is not within competence of Court to allow *mesne* profit for a longer period by reason of Order 20 Rule 12 CPC, then there is no justification for allowing *mesne* profit for period exceeding three years – *Mesne* profit can only be awarded for the term of three years, which has already been deposited in present case – Impugned order set aside – Revision allowed: *Bajranglal (Dead) Through LRs Mahila Draupadi Vs. Gajanand, I.L.R. (2019) M.P. 1896*

– Order 21 – An execution application was preferred and an objection was raised by the present applicants stating that the decree cannot be executed as the terms and conditions of decree were not fulfilled – Held – Decree holder has not complied with the terms and conditions laid down in the judgment and decree by not depositing the amount of remain sale consideration within 60 days and by not at all depositing the amount towards the Court Fees and penalty – Objection preferred by the present applicants deserves to be allowed – Execution is dismissed: *Rammanohar Pandey Vs. Abhay Kumar Jain (Dead) Through LRs., I.L.R. (2016) M.P. 1182*

– Order 21 Rule 1 & 4 – Deposit of Decreetal Amount – Interest – Arbitrator passed an award for refund of money alongwith interest – In appeal, execution was stayed subject to deposit of 50% amount in Court which could be withdrawn by the decree holder by furnishing security – Subsequently appeal dismissed – Judgment debtor filed an application with a plea that as he has already paid 50% amount, he will not be liable to pay interest on that amount – Application allowed – Challenge to – Held – Deposit made by Judgment debtor under the directions of the Court while passing interim order, would not amount to deposit of the decreetal amount under the purview of Order 21 Rule 1 C.P.C. – Judgment debtor is liable to pay interest on the said deposit amount – Revision allowed: *Manoj Kumar Agrawal Vs. Nepa Ltd. Nepanagar through its CMD, I.L.R. (2017) M.P. 2256*

– Order 21 Rule 11 – Execution of conditional temporary injunction order – Order of temporary injunction was passed with a condition that if the plaintiff fails to

prove his case, he would be liable to pay compensation of Rs. 60,000/- – Suit was dismissed and judgment was maintained in Second Appeal also – However, condition of payment of compensation of Rs. 60,000/- was not included in decree – Held – Provisions of Order 21 Rule 11 are applicable for execution of the decree and not the order – Since the condition was not made as a part of decree the order passed under Order 39 Rule 1 & 2 is not a decree – Application filed under Order 21 Rule 11 is not maintainable – Impugned order is set-aside – Revision is allowed: *Rajnarayan Tiwari Vs. Smt. Vidhya Awathi, I.L.R. (2016) M.P. 1195*

– Order 21 Rule 26 r/w Section 151 & Order 26 Rule 13 & 14 r/w Section 151 – Decree directing partition by mentioning directions surrounding the suit house and determining share, whether executable without preparation of final decree – Held – No, as the nature of decree unambiguously requires division of shares between the parties by metes and bounds, Decree cannot be said to be final – Trial Court is first required to appoint a Commissioner under Order 26 Rule 13 and thereafter under Rule 14, the Court is required to decide the objections on commissioner report, if any, and to take a decision either to confirm or set aside or vary with the report – The decree passed thereafter would be a final decree and executable under Order 21 Rule 18 C.P.C. – Further held – Executing Court committed illegality in ordering execution of preliminary decree and further by proceeding to prepare a final decree – Revision allowed setting aside impugned order: *Vijay Sood Vs. Kanak Devi, I.L.R. (2016) M.P. 2054*

– Order 21 Rule 30 – Execution of Money Decree – Held – Even if judgment debtor has expired, money decree is liable to be executed by attachment of his property: *Jhalak (Kumari) Vs. Rahul (Deceased) Through Smt. Seema, I.L.R. (2020) M.P. 156*

– Order 21 Rule 32 – Permanent Injunction – Execution of – Suit for declaration and permanent injunction decreed in favour of petitioner which has attained finality till second appellate stage – Warrant of possession issued against respondent whereby possession was restored to petitioner and he is still enjoying the possession – Merely on ground of apprehension that respondents are trying to interfere with possession, provision of Order 21 Rule 32 CPC cannot be invoked – Petition dismissed: *Toran Singh Vs. Imrat Singh (Dead) Through L.R. Naval Singh, I.L.R. (2017) M.P. *164*

– Order 21 Rule 34 – See – Specific Relief Act, 1963, Section 28: *Harjeet Vs. Abhay Kumar, I.L.R. (2019) M.P. 594*

– Order 21 Rule 37 – Execution Case – Issuance of Arrest Warrant – Show Cause Notice – Trial Court allowed the application under Order 21 Rule 37

CPC filed by the Decree holder whereby arrest warrant was issued against the judgment debtor – Challenge to – Held – Before issuing the warrant of arrest, Court is required to issue show cause notice to the judgment debtor calling upon him to appear before the Court on a date specified in the notice and show cause why he should not be committed to civil prison – Further held – Rule 37 provides that notice shall not be necessary if the Court is satisfied, by affidavit or otherwise, that with the object of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court – In the present case, no such notice was issued before issuance of arrest warrant – Impugned order set aside: *Alok Khanna Vs. M/s. Rajdarshan Hotel Pvt. Ltd., I.L.R. (2018) M.P. 709*

– Order 21 Rule 40 – Execution Case – Issuance of Arrest Warrant – Enquiry – Held – After appearance of the judgment debtor in obedience to notice or after arrest, executing Court shall proceed to hear the decree holder and take all such evidences produced by him in support of his application and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to civil prison – In the instant case, procedure prescribed under Order 21 Rule 40 has not been followed – No enquiry has been conducted before passing the impugned order – Procedural illegality is in the impugned order hence hereby set aside – Petition allowed: *Alok Khanna Vs. M/s. Rajdarshan Hotel Pvt. Ltd., I.L.R. (2018) M.P. 709*

– Order 21 Rule 65 & 69(2), Form No. 29 and Contract Act (9 of 1872), Section 6 – Auction Proceedings – Acceptance/Declaration – Executing Court adjourned the case and declined to accept bid/offer of petitioner – Sale not concluded – As per Order 21 Rule 65, there must be declaration about highest bidder as purchaser which gives right to claim acceptance of bid – There is no such order accepting bid of petitioner thus no right accrued in his favour – Proposal of petitioner quoting highest bid in auction stands revoked as the same was not accepted: *Manish Tiwari Vs. Deepak Chotrani, I.L.R. (2020) M.P. 1363*

– Order 21 Rule 68 & 69(2), Form No. 29 – Auction Proceedings – Jurisdiction & Discretion of Court – Court has discretion and is competent to adjourn sale proceeding for a specified date or for specified time – As per order 21 Rule 69(2) CPC, if sale is adjourned for more than 30 days then fresh proclamation under Rule 68 shall be made – Executing Court on 08.02.2018 adjourned sale proceeding as an objection/ application was pending and later on 27.06.2018 the same was decided – As matter was adjourned for more than 30 days, Court rightly ordered for re-auction – Petition dismissed: *Manish Tiwari Vs. Deepak Chotrani, I.L.R. (2020) M.P. 1363*

– Order 21 Rules 97, 100 & 102 – Execution Proceedings – Bonafide Purchaser Lis pendens – Respondent No.1/Plaintiff filed a suit for specific performance of contract against Respondent No.2/Defendant in which ex-parte decree

was passed – In execution proceedings before Trial Court, appellant herein filed application under Order 21 Rule 97 on the ground that he was a bonafide purchaser of the suit property – Application was dismissed – Challenge to – Held – A purchaser of suit property during pendency of litigation has no right to resist or obstruct execution of decree passed by Court – Lis pendens prohibits a party from dealing with property which is the subject matter of suit – Rule 102 further clarifies that there should not be resistance or obstruction by a transferee pendente lite and if it is caused/offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order 21 C.P.C. – Further held – It seems that appellants must have colluded with judgement debtor and have been set up by him to resist the execution of decree – Application is absolutely frivolous and does not disclose any legal right to obstruct delivery of possession of property so as to recording of evidence – Trial Court rightly dismissed the application after affording opportunity of hearing – Appeal dismissed with cost of Rs. 5000: *Chandra Kumar Chandwani Vs. Anil Gupta, I.L.R. (2017) M.P. 1701*

– Order 22 Rule 3 & 5 – Legal Representative – Rights over the title of suit property – Held – Appellants were brought on record as LRs by virtue of will but after becoming a party, they ought to have established their right over suit property – By allowing application under order 22 Rule 3 CPC, appellants were given limited rights to continue the suit – In pleadings also, appellants did not claim any relief by way of amendment that they have succeeded ½ share of the original plaintiff – No error by courts below while dismissing the suit – Appeal dismissed: *Sheela Vs. Bhagudibai, I.L.R. (2019) M.P. 1258*

– Order 22 Rule 4 – Abatement of Appeal – Substitution of Legal Representatives – Held – When name of deceased party is deleted without any substitution, then it would mean that said party is no more in the suit/appeal – If person is not a party to suit/ appeal then his LR's cannot be brought on record under Order 22 Rule 4 – Further held – Subsequent purchaser cannot be held to be a legal representative of original vendor – Appeal dismissed as abated: *Kishorilal (Dead) Through L.Rs. Vs. Gopal, I.L.R. (2017) M.P. 2988*

– Order 22 Rule 4 – Substitution of Legal Representatives – Practice – Held – Appellants themselves by filing an application for deletion of name, has committed the mistake of law, which cannot be corrected by modifying or recalling the order, even by adopting the most lenient view: *Kishorilal (Dead) Through L.Rs. Vs. Gopal, I.L.R. (2017) M.P. 2988*

– Order 22 Rule 5 – Legal Representatives – Applicability & Enquiry – Held – If a party comes forward on basis of 'Will' executed by deceased, then an enquiry is contemplated – In present case, neither appellant nor respondent is seeking

substitution of LR of deceased, thus provision of Order 22 Rule 5 CPC cannot be attracted – Under Order 22 Rule 5 CPC, limited question relating to LR is decided only for purpose of bringing LRs on record which does not operate as res-judicata – Inter se dispute between rival LRs has to be independently tried and decided in appropriate proceedings: *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

– Order 22 Rule 9 – Abatement of Appeal – Held – Statement was made before the Court regarding death of appellant and two weeks' time was sought for moving appropriate application, but no application was filed – Application for setting aside abatement showing reasons contrary to the statement made earlier before the Court – Appeal stands abated by operation of law and abatement cannot be set aside for the aforesaid reason: *Ratanlal Vs. Shivlal, I.L.R. (2016) M.P. 3345*

– Order 22 Rule 10, Order 1 Rule 10 & Order 6 Rule 17 – Assignment of Rights – Impleadment of Party – Amendment – Plaintiff Sanjeev Lunkad filed suit for specific performance of contract – Evidence was over and final hearing was done, matter was reserved for judgment – At this stage, appellant filed applications under Order 22 Rule 10 and Order 1 Rule 10 CPC for adding them as co-plaintiff on the ground that plaintiff had executed deed of assignments in their favour – Application under Order 6 Rule 17 was also filed – Trial Court rejected the applications – Challenge to – Held – Assignee is not a party to contract of sale sought to be enforced in the present suit – Presence of appellant/assignee is not necessary for full and effective disposal of the suit – Since original Plaintiff himself is the shareholder and promoter director of the appellant/assignee company, such assignment made by plaintiff at final stage of suit, lacks *bonafides* – Applications rightly rejected – Further held – Application under Order 6 Rule 17 was filed belatedly at the final stage of the suit i.e. after 5 years of filing of suit without satisfying the test of due diligence, hence rightly rejected by Trial Court – Misc. Appeals and Writ Petitions dismissed: *Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad, I.L.R. (2017) M.P. 1154*

– Order 23 Rule 1(3) – "Formal Defect" – Effect – Held – In partition suit, plaintiff has not submitted any map or description of property – Amendment application was also dismissed which attained finality – Having failed to get the plaint amended, plaintiff adopted alternative method of getting rid of weakness of pleadings – After recording of evidence, plaintiff realized her weakness and in order to frustrate the valuable right which already accrued in favour of defendants, she tried to withdraw the suit in the garb of "formal defect" – Case of petitioner do not come within purview of Order 23 Rule 1(3) CPC – Petition dismissed: *Aram Bai Vs. Pratap Singh (Dead) Through L.Rs., I.L.R. (2019) M.P. 293*

– Order 23 Rule 1(3) – "Formal Defect" – "Non-Joinder of Party" – Held – If plaintiff comes to know that some necessary party has not been impleaded, then

she could have filed an application under Order 1 Rule 10 CPC – Non-joinder of party cannot be termed as "formal defect": *Aram Bai Vs. Pratap Singh (Dead) Through L.Rs., I.L.R. (2019) M.P. 293*

– Order 23 Rule 1(3) – "Formal Defect Resulting in Failure of Suit" – Effect – Held – Plaintiff filed a suit for partition but had not given the details of property at all – Plaintiff decided to file the suit as per her wisdom and when later on if it is found by her that she may not get the relief of her choice, then it cannot be said that the defect was formal in nature resulting in failure of suit as provided under Order 23 Rule 1(3) CPC – Further held – Failure of suit and failure to get relief of her choice are two different aspect: *Aram Bai Vs. Pratap Singh (Dead) Through L.Rs., I.L.R. (2019) M.P. 293*

– Order 23 Rule 1(3) - Withdrawal of Suit - "Formal Defect" - Recording of "Satisfaction" - "Formal defect" is a defect such as, want of notice u/s 80 CPC, improper valuation of suit, insufficient court fee, confusion regarding identification of suit property, misjoinder of parties, failure to disclose a cause of action - Rejection of a material document for not having a proper stamp, also comes in the purview of formal defect - "Satisfaction" ought to be recorded by the Trial Court that suit must fail by reason of some "formal defect" - Trial Court, while allowing the plaintiff's application under Order 23 Rule 1(3) has properly recorded the satisfaction and has assigned reasons with respect to improper valuation on account of not asking the relief of possession which may result into failure of the suit - Jurisdiction exercised by the Trial Court is just and proper - No interference called for - Petition dismissed: *Charan Singh Kushwah Vs. Smt. Gomati Bai, I.L.R. (2018) M.P. *4*

– Order 23 Rule 1 & 3 – Principle of Waiver of Rights – Held – As per Order 23, Rule 3, plaintiff shall be precluded from instituting any fresh suit in respect of same subject matter or claim or part of claim of earlier suit – In previous and subsequent suit, subject matter and claim of plaintiff is not only same but identical – Plaintiff withdrawn earlier suit without liberty to file fresh suit, thus he is precluded from instituting fresh suit – Revision allowed: *Suresh Kesharwani Vs. Roop Kumar Gupta, I.L.R. (2020) M.P. 1955*

– Order 23 Rule 1(4) – Subsequent Suit – Maintainability – Grounds – Held – In the former as well as subsequent suit, the subject matter and dominant reliefs claimed are the same and in respect of the same property – In subsequent suit, plaintiff has added some more defendants and given some different date of cause of action but the nature of the suit is similar – Former suit was withdrawn without any liberty – Subsequent suit is barred by law and not maintainable – Appeal dismissed: *Mohd. Hasan Vs. Abu Bakar, I.L.R. (2019) M.P. 423*

– Order 23 Rule 1(4) and Limitation Act (36 of 1963), Article 58 – Subsequent Suit – Cause of Action – Held – Plaintiff claimed relief of declaration of his share in property and he got the cause of action when he filed suit in 1993 – Subsequent suit filed in 2000 is barred by limitation as per Article 58 of Limitation Act – Merely because plaintiff has given a cause of action saying that same arose in 2000 when defendants refuse to comply with oral assurance, does not mean that plaintiff got a separate cause of action and a different subject matter: *Mohd. Hasan Vs. Abu Bakar, I.L.R. (2019) M.P. 423*

– Order 23 Rule 3 & Order 43 Rule 1A – Compromise Decree – Appeal – Held – An appeal lies against a compromise decree under Order 43 Rule 1A CPC – Provisions is applicable to those persons who are party in the suit as well as to the compromise – In present case, appellant/plaintiff was not a party to suit as well in the compromise – Appellant can certainly filed a suit seeking declaration that decree passed in earlier suit is void and not binding on him – Findings recorded by trial Court set aside – Appeal allowed: *Jagdish Chandra Gupta Vs. Madanlal, I.L.R. (2019) M.P. 140*

– Order 23 Rule 3A – Subsequent Suit – Bar – Held – Earlier civil suit filed by respondent against applicant was withdrawn on basis of unconditional compromise, admitting/acknowledging title and possession of applicant – No term of compromise was mentioned in application – Subsequent suit by respondent on the ground that compromise terms had not been complied with, is barred under Order 23 Rule 3A C.P.C. - Impugned order set aside – Subsequent suit dismissed – Revision allowed: *Ramdevi Vs. Tulsa, I.L.R. (2019) M.P. 2356*

– Order 23 Rule 3A & Order 10 – Cause of Action – Maintainability – Held – It is clear that no civil suit lie to set aside a decree on the ground that compromise on which decree is based is not lawful – If drafting has created an illusion of cause of action, same should be nipped in the bud at first hearing by examining parties under Order 10 C.P.C.: *Ramdevi Vs. Tulsa, I.L.R. (2019) M.P. 2356*

– Order 23 Rule 3-A & Order 43 Rule 1-A(2) – Compromise Decree – Appeal – Maintainability – Held – When a compromise decree is passed, a party to litigation will have a remedy of filing an appeal under Order 43 Rule 1-A(2) CPC, thus, against a compromise decree, an appeal is maintainable: *Shiv Singh Vs. Smt. Vandana, I.L.R. (2019) M.P. *64*

– Order 26 Rule 9 – Appointment of Commission – Appropriate Stage – Respondent filed application under Order 26 Rule 9 C.P.C. for appointment of Commission which was rejected by trial Court – Subsequently at the stage of final argument, he again filed the same application which was allowed – Challenge to –

Held – Earlier application was not rejected on merits but was rejected as it was not filed at appropriate stage – As per Order 26 Rule 9 C.P.C., parties to suit must prove their case by way of evidence and thereafter if Court wants that any issue or matter in dispute requires any clarification or elucidation, it may appoint a commission – Either of the party may file such application or Court may suo motu appoint a commission – Further held – Commission can be appointed only in case of demarcation and encroachment whereas possession is to be decided on basis of evidence – After the evidence was over, trial Court rightly exercised its discretion while allowing the application – No illegality in impugned order – Petition dismissed: *Gyanchand Ramrakhyani Vs. Navdeep Khera, I.L.R. (2018) M.P. 1679*

– Order 26 Rule 9 – Appointment of Local Commissioner – Dispute of Boundaries – Consideration – Held – It is established principle of law that where dispute is of boundaries, then same can be resolved by appointing a commissioner but there should not be any claim of title over the land belonging to another party – Except the question of identity of property, no other dispute should be involved – Present case cannot be said to be a simple case of boundary dispute: *Ram Biloki Vs. Ramswaroop, I.L.R. (2019) M.P. 537*

– Order 26 Rule 9 – Appointment of Local Commissioner – Grounds – Held – The prayer made in application under Order 26 Rule 9 and by reply to the application, parties to suit have tried to collect evidence through appointment of local commissioner, which cannot be allowed – Court while passing an order under Order 26 Rule 9 CPC cannot delegate its powers of adjudicating the dispute to a local Commissioner – Words "elucidating any matter in dispute" would not include collection of evidence – Impugned order set aside: *Ram Biloki Vs. Ramswaroop, I.L.R. (2019) M.P. 537*

– Order 26 Rule 10A – Application in Appeal for Examination of Signatures by Handwriting Expert – Competency of Lawyer and Litigant – Held – Nothing in application to show why such application was not filed before Trial Court – Excuse that their lawyer did not advise them so, cannot be accepted – Party, if engaged a lawyer having less knowledge, then it is him, who has to suffer – Further held – Professional incompetence of a lawyer cannot be presumed – Application rejected: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Order 26 Rule 10(A) – See – Land Revenue Code, M.P., 1959, Section 43: *Ramniwas Vs. Omkar Singh, I.L.R. (2018) M.P. 2379*

– Order 30 Rule 1 and Partnership Act, (9 of 1932), Section 69(2) – Maintainability of Suit – Respondent/plaintiff firm filed a recovery suit represented by its two partners against the petitioners – Out of two partners, one partner was not

a registered partner – Held – Section 69(2) of the Act of 1932 prohibits institution of suit filed by a partnership firm or the partners against a third party unless atleast two qualified partners (*whose names are mentioned in registration certificate of partnership firm*) represent the plaintiff partnership firm – In the present case, institution of suit by only one qualified partner runs contrary to the mandatory provisions of Section 69(2) of the Act – Suit not maintainable and is accordingly dismissed – Revision allowed: *Vijay Kumar Vs. M/s. Shriram Industries, I.L.R. (2017) M.P. 937*

– Order 32 Rule 3(A), Evidence Act (1 of 1872), Section 44 and Limitation Act (36 of 1963), Article 6, 8, 59 & 60 – Limitation to file a Suit – In 1982, plaintiffs filed a suit after 17 years of consent decree praying to set aside the consent decree passed in the year 1965, the same been obtained by fraud – Trial Court decreed the suit in favour of plaintiffs on the basis of Article 59 of the Limitation Act, treating the suit within limitation from the date of knowledge of passing of consent decree passed in 1965 and holding that plaintiffs came to know about the same in the year 1982 – Defendant filed an appeal whereby the appellate Court reversed the judgment and decree on the ground of Section 6 and 8 of the Limitation Act – Appellants/Plaintiff filed this second appeal – Held – If plaintiff no. 1 and 2 were not aware of consent decree or were aggrieved by the said decree then they should have come out with the case pleading misconduct/gross negligence as provided under Order 32 Rule 3(A) of CPC or under Section 44 of the Evidence Act for fraud or collusion but record of the case shows that there is no such pleadings/submissions made by appellants – Further held – Plaintiffs filed suit after 17 years of consent decree – Conjoined reading of Section 6, 7 and 8 of Limitation Act shows that litigant is entitled to a fresh period of limitation i.e three years from the date of cessation of disability – Suit has not been filed within three years after attaining the majority and therefore barred by time – Appellate Court rightly dismissed the appeal – Second Appeal dismissed: *Chironji Bai Vs. Narayan Singh, I.L.R. (2017) M.P. 1135*

– Order 32, Rules 4, 5 & 15 – Suit through next friend – Application for – Inquiry – Suit filed by plaintiff through next friend, daughter – Writ Petition against dismissal of application under Order 32 Rule 15 filed by petitioner/defendant – Held – Order 32 Rule 1 to 14 except Rule 2A as applicable to the case of minor shall also apply to the person of unsound mind, where a suit is instituted by next friend – Qualification prescribed is that person must have attained the age of majority to act as next friend of minor or his guardian provided that the interest of such person is not adverse to that of the minor and the next friend should not be the defendant of a suit – In case, a minor has a guardian appointed or declared by competent authority, then such guardian may proceed in a suit and he shall be the next friend of the minor or of a person of unsound mind unless the Court considers to change the same recording reasons for appointing another person – In the present case, Ms. Rukhsar is daughter

of plaintiff Kamrunnisa, and as per certificate of Medical Board, Kamrunnisa is found to be of unsound mind to the extent of 55%, daughter is not having adverse interest in property of mother and being major, she been declared as next friend to institute the suit and to proceed in the matter, appears to be justified – As per Order 32 Rule 1 CPC, it is not mandatory that such appointment must be on an application prior to institution of suit – Further held – It is not incumbent on the Court to hold an enquiry as required by the later part of Rule 15, but it would apply when the power is required to be exercised by Court – Appointment of next friend was in accordance with law – Writ Petition dismissed: *Meharunnisa (Smt.) Vs. Smt. Kamrunnisa through Next Friend Daughter Ku. Rukhsar Begum, I.L.R. (2018) M.P. 501*

– Order 33 Rule 15-A – Indigent Person – Grant of Time for Payment of Court Fee – Held – If Court has granted time to pay Court Fee and the same has been paid, then suit is deemed to have been filed/instituted on the date on which application for permission to sue as indigent person, was filed – In the present case, plaintiff/petitioner filed suit for specific performance of contract alongwith application under Order 33 Rule 3 seeking permission to sue as indigent person on 04.05.2011 whereas Court fee was paid on 04.07.2013 by permission of Court – Suit is deemed to be instituted on 04.05.2011 – Impugned order set aside – Petition allowed: *Yusuf Khan Vs. Sheikh Gulam Mohammad @ Shahanshah, I.L.R. (2018) M.P. *59*

– Order 38 Rule 5 – Attachment Order of property before Judgment – Respondent/Plaintiff filed suit for recovery of loan amount against Petitioners – Respondent filed an application under Order 38 Rule 5 C.P.C. seeking attachment of property of Petitioner on the ground that Petitioner is trying/planning to sell the property and is going to leave the city – Application allowed by the trial Court – Challenge to – Held – The essential requirement for an order of attachment before judgment is the malafide intention and conduct of defendant in disposing of the property with dishonest intention of defeating or delaying the decree that may be passed in the suit – Powers given under Order 38 Rule 5 C.P.C. are drastic and extraordinary and same must be used sparingly and not in a mechanical manner – In the present case, Court below has not assigned any reasons for taking drastic step in passing the impugned order and has passed the same in a mechanical manner – Impugned order set aside – Petition allowed: *Rajput Road Lines Vs. Devendra Kumar Pranami, I.L.R. (2017) M.P. 1396*

– Order 39 – Suit for Declaration & Permanent Injunction – Public/Private Temple – Ownership – Documentary Evidence – Held – The fact that appellant having taken the Mandir lands on lease from government clearly shows that properties were never owned by *pujaris* in individual capacity – Appellant is estopped from denying that temple properties are under management and control of Government –

Suit lands have been given for arrangement of *pooja, archana, naivedya* etc, *pujari* has no right to interfere in management of suit lands as his status is only that of *pujari* – Collector was recorded as manager for suit lands since 1975 and same was never challenged – Shri Ram Mandir has been recorded as *"Bhumiswami"* – Even *pujari* has been appointed by SDO – Further, agricultural lands were given to Deity and not to *Pujaris* – Upon appreciation of oral and documentary evidence, first appellate Court and High Court rightly held that Shri Ram Mandir is a public temple and not a private one – Appeal dismissed: *Shri Ram Mandir Indore Vs. State of M.P., I.L.R. (2019) M.P. 1363 (SC)*

– Order 39 and Constitution – Article 227 – Jurisdiction & Scope – Suit for Permanent Injunction – Valuation of Suit – Held – Where the relief of permanent injunction is not independent and is ancillary to the main relief, the plaintiff has to value the injunction suit as valued for purpose of declaration of title and pay ad-valorem court fee on such valuation – Trial Court rightly held, that in present case permanent injunction cannot be granted without adjudicating the main relief of declaration of title – Jurisdiction under Article 227 cannot be exercised to correct all errors of subordinate Court acting within its jurisdiction– Petition dismissed: *Samudri Bai (Smt.) Vs. Mohit Kumar Jain, I.L.R. (2017) M.P. *162*

SYNOPSIS : Order 39 Rule 1 & 2

1. Considerations/Grounds **2. Discretionary Jurisdiction**

3. Possession of Property **4. Subsequent Events/Stage of Trial**

1. Considerations/Grounds

– Order 39 Rule 1 & 2 – Considerations – Held – Plaintiff is not required to make out a clear legal title but has only to satisfy the Court that he has fair question to arise as to existence of legal right claimed by him in suit: *Suman Chouksey (Smt.) Vs. Dinesh Kumar, I.L.R. (2020) M.P. 175*

– Order 39 Rule 1 & 2 – Injunction – Held – Injunction cannot be granted as a matter of course or on mere asking – Apart from three necessary ingredients, i.e. prima facie case, balance of convenience and irreparable loss, the Courts are required to see the conduct of the parties: *Rajesh Mishra Vs. Ram Vilas Singh Kushwaha, I.L.R. (2016) M.P. 2462*

– Order 39 Rule 1 & 2 – Principles & Grounds – Held – While granting injunction in favour of plaintiff, entire record has been meticulously examined and upon relative assessment and critical evaluation, trial Court addressed the three fold principle viz., prima facie case, balance of convenience and irreparable loss – Order

is speaking and well reasoned – No interference required – Appeal dismissed: *Suman Chouksey (Smt.) Vs. Dinesh Kumar, I.L.R. (2020) M.P. 175*

2. Discretionary Jurisdiction

– Order 39 Rule 1 & 2 – Discretionary Jurisdiction – Held – Trial court essentially exercise discretionary jurisdiction under Order 39, Rule 1 & 2 CPC – Unless the discretion so exercised suffers from perversity of approach or vitiated by glaring errors of fact or law or capricious or palpably perverse, Appellate Court normally should not interfere with exercise of jurisdiction in appeal if other view was possible: *Suman Chouksey (Smt.) Vs. Dinesh Kumar, I.L.R. (2020) M.P. 175*

– Order 39 Rule 1 & 2 – Injunction – Whether the trial Court has power to call the deponent for cross- examination under Order 39 – Held – It cannot be accepted as a thumb rule that in no circumstances the trial Court can permit the cross-examination of the deponent in proceedings under Order 39 Rule 1 & 2 – This cannot be forgotten that the statute is to be interpreted to advance the cause of justice – Too technical a construction of provision that leaves no room for reasonable elasticity of interpretation should be avoided – Court has power to permit cross-examination: *Balmukund Sharma Vs. Balkrishna Sharma Upadhyay, I.L.R. (2016) M.P. 67*

– Order 39 Rule 1 & 2 – Scope of seeking injunction by the defendants under the provision – Question involved – Whether the defendants have any legal right available to move application under Order 39 Rule 1 & 2 of C.P.C. or not – Held – Rule 1(a) provides remedy to any party in respect of any property in dispute in a suit, if the same is in danger or being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree – In such a case, defendant also can move an application for injunction under Order 39 Rule 1 & 2 of C.P.C. – Further Held – Even otherwise, there is no provision in Section 94 expressly prohibiting issuance of temporary injunction in cases not covered by the Order 39 C.P.C. or any rules made thereunder – The Courts have inherent jurisdiction to issue temporary injunction in such cases, if the Court is of the opinion that the interest of justice so requires: *Nandu Vs. Smt. Jamuna Bai, I.L.R. (2016) M.P. 3076*

3. Possession of Property

– Order 39 Rule 1 & 2 – Injunction – Application for injunction rejected by Wakf Tribunal – However, had initially granted injunction – In final order it is mentioned that applicant is in possession of property – Held – As the applicant is in possession, in all fairness, injunction should be granted – Revenue authorities are directed to place the petitioner forthwith in possession and not to disturb till the suit is finally

decided by Tribunal – Revision allowed: *Shahjad Shah Vs. M.P. Wakf Board, I.L.R. (2016) M.P. 1495*

4. Subsequent Events/Stage of Trial

– Order 39 Rule 1 & 2 – Temporary Injunction – Prima Facie Case – Stage of Trial/Suit – Subsequent Event – Consideration – Held – When temporary injunction is claimed, it is the duty of Court to form an opinion regarding prima facie case in favour of plaintiff and then to decide whether temporary injunctions can be granted or not – For forming opinion, Court can also examine subsequent developments, took place during pendency of appeal – In present case, evidence has been closed by parties and case is fixed for final arguments – In previous round of litigation, this Court has passed detailed order refusing temporary injunction to appellants – At this stage, temporary injunction cannot be granted – Trial Court directed to decide the suit within two months – Appeal dismissed: *Skol Breweries Ltd. Vs. Som Distilleries & Breweries Ltd., I.L.R. (2018) M.P. 2770*

• **– Order 39 Rule 2A** – See – Criminal Procedure Code, 1973, Section 482: *Savitri Bai (Smt.) (Correct Name Smt. Savita Chajju Ram) Vs. Tapan Kumar Choudhary, I.L.R. (2018) M.P. *77*

– Order 39 Rule 2A(1), (2) – Injunction Order – Disobedience/Non-Compliance – Injunction order passed against applicant on 28.02.2015 (Saturday) and sale deed was executed on 02.03.2015 (Monday) of a part of property by power of attorney holder of applicant, who had no knowledge of the order – Held – Act was done in good faith and cannot be said that disobedience or non-compliance was made with malafide intention – Applicant also assured that after getting knowledge of injunction order, no further sale of any part of land would be made – Impugned order directing civil imprisonment is set aside – Revision allowed: *Kalpana Mudgal (Smt.) Vs. Vinod Kumar Sharma, I.L.R. (2019) M.P. 932*

– Order 39 Rule 2A(1), (2) – Injunction Order – Disobedience/Non-Compliance – Procedure – Held – In case of disobedience/non-compliance of order, Court may first order the property of person guilty of such disobedience or breach to be attached and thereafter it may also order such person to be detained in civil prison for a term not exceeding 3 months: *Kalpana Mudgal (Smt.) Vs. Vinod Kumar Sharma, I.L.R. (2019) M.P. 932*

– Order 39 Rule 7 – Inspection – Meaning – The process of inspection undertaken by an inspection agency and includes an audit, inspection, site visit by an inspection agency or any person authorised by the accreditation agency for this purpose – It also includes any inspection conducted by an accreditation agency pursuant to

directions from the authority: *Gopaldas Khatri Vs. Dr. Tarun Dua, I.L.R. (2018) M.P. 1934*

– Order 39 Rule 7 – Inspection under – Purpose – To keep on record the existing condition of the property so that any change or its effect can be looked into and determined subsequently: *Gopaldas Khatri Vs. Dr. Tarun Dua, I.L.R. (2018) M.P. 1934*

– Order 39 Rule 7 – Powers under the provision – In exercise of powers under – The collection of evidence to prove the case of a party is impermissible: *Gopaldas Khatri Vs. Dr. Tarun Dua, I.L.R. (2018) M.P. 1934*

– Order 39 Rule 7 & Order 26 Rule 9 – Inspection of the suit property by appointing commission – Issue of possession – Held – Commission can be appointed only in case of demarcation and encroachment – Purpose of Order 26 Rule 9 or Order 39 Rule 7 CPC is not to collect evidence – Issue of possession is a matter to be decided only on the basis of evidence that too after framing the issues and burden lies on the plaintiff to establish by way of evidence – Such findings regarding possession cannot be recorded by the trial Court on the basis of the report of Tehsildar – Trial Court's order set aside so far it relates to recording the finding about the possession of plaintiff – Petition allowed: *Ashok Parwat Vs. Sudarshan, I.L.R. (2017) M.P. *67*

– Order 39 Rule 7 and Order 26 Rule 9 & 10 – Applicability – Cross Examination of Commissioner – Petitioner/ Defendant filed application to cross examine the Commissioner which was rejected – Challenge to – Held – Provisions of Order 26 and Order 39 operate in separate fields – Evidence is led only after issues are framed whereas application of temporary injunction is decided only on basis of affidavits of parties – In the instant case, written statement has not yet been filed by petitioner and at this initial stage, allowing him for cross examination would amount to putting cart before horse – It will frustrate the very purpose of Order 39 Rule 7 CPC which cannot be allowed – No illegality in impugned order – Petitioner directed to file written statement within 10 days – Petition dismissed with cost: *Radharani (Smt.) Vs. Kamlesh Kumar Kathraya, I.L.R. (2018) M.P. 1408*

– Order 41 Rule 5 – Money decree – Stay of Execution – It can not be stayed unless there are special circumstances exists: *Ashok Lalwani Vs. State Bank of India, I.L.R. (2018) M.P. *61*

– Order 41 Rule 5 – Stay of Execution of Decree – Whether the First Appellate Court can pass an ex-parte order for stay of execution of decree without imposing any condition – Held – No: *Ashok Lalwani Vs. State Bank of India, I.L.R. (2018) M.P. *61*

– Order 41 Rule 17(1), Explanation and Central Excise Act (1 of 1944), Section 35-C – Absence of Appellant – Hearing – Held – Order 41 Rule 17(1) explanation enables Appellate Court to adjourn the case to some future date but it does not empower to adjudicate the appeal on merits in absence of appellant – Nothing in Rule which provides that when appellant is not present and respondent appears, the appeal shall be disposed of *ex-parte* – Impugned order set aside – Matter remanded for adjudication on merits afresh: *Quality Agencies (M/s.) Vs. The Commissioner, Customs & Central Excise, I.L.R. (2020) M.P. 204 (DB)*

– Order 41 Rule 17(1), Explanation & Rule 19 – Held – In absence of appellant, appeal may be dismissed in default without going into merits so that appellant may avail of the remedy under Order 41, Rule 19 CPC for effective adjudication: *Quality Agencies (M/s.) Vs. The Commissioner, Customs & Central Excise, I.L.R. (2020) M.P. 204 (DB)*

– Order 41 Rule 17(1), (2) & Rule 21 – Held – When matter is heard in absence of respondent and *ex-parte* decree is passed under Order 41 Rule 17(2) CPC, Rule 21 provides an opportunity to respondent to prefer application for re-hearing of appeal by showing sufficient cause for his non-appearance: *Quality Agencies (M/s.) Vs. The Commissioner, Customs & Central Excise, I.L.R. (2020) M.P. 204 (DB)*

– Order 41 Rule 21 – Cross Appeal/ Cross Objection – Held – If respondent is interested in challenging the adverse findings recorded against him by Court below, he is required to file at least his memo of objection in writing which may not be in form of cross objection or cross appeal – Respondents not permitted to challenge the findings recorded in favour of plaintiff in respect of will without filing any cross objection in appeal: *Jagdish Chandra Gupta Vs. Madanlal, I.L.R. (2019) M.P. 140*

– Order 41 Rule 22 – See – Motor Vehicles Act, 1988, Section 166 & 173: *National Insurance Co. Ltd. Vs. Dilip Kumar Jain, I.L.R. (2019) M.P. 2537*

– Order 41 Rule 23-A – Exercise of Power – Held – Apex Court concluded that order of remand should not be passed routinely – Scope is limited – This Court has also earlier concluded that power of remand cannot be exercised to fill up the lacuna of one or other party and can only be exercised for curing a radical defect in trial or hearing in appeal resulting in miscarriage of justice: *Sudesh Kohli (Smt.) Vs. Smt. Chandarani Mishra, I.L.R. (2019) M.P. 1441*

– Order 41 Rule 23-A – Remand for Re-trial – Scope & Jurisdiction – Grounds – Held – Trial Court, very elaborately/categorically appreciated each and every evidence, oral/documentary and left no issues unanswered or undecided – Appellate Court has not given any specific reason as to why findings of trial Court is

not proper – Appellate Court, instead of remand, could have decided the same on merits and thus has not exercised its discretion as conferred under Order 41 Rule 23-A CPC – Impugned judgment and decree set aside – Matter remitted to Appellate Court to decide the same on merits – Appeal allowed: *Sudesh Kohli (Smt.) Vs. Smt. Chandarani Mishra, I.L.R. (2019) M.P. 1441*

SYNOPSIS : Order 41 Rule 27

1. Adverse Inference/Presumption **2. Grounds/Considerations**

3. Public Documents **4. Secondary Evidence**

5. Stage of Litigation

1. Adverse Inference/Presumption

– Order 41 Rule 27 and Evidence Act (1 of 1872), Section 114 – Application in Appeal for Taking Documents on Record – Presumption – Held – Stamp vendor was summoned as witness in trial Court by appellant, accordingly he appeared with original documents but was given up by appellants themselves, therefore it can be presumed that stamp vendor would have deposed against appellants – Adverse inference can be drawn against appellant – Now in appeal, he cannot pray requisitioning original record of stamp vendor or that a copy of the register of stamp vendor be taken on record – Application rejected: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

2. Grounds/Considerations

– Order 41 Rule 27 – Additional Evidence – Grounds – Held – Provisions of Order 41 Rule 27 CPC do not authorize and are not made to patch up the weak point in the case and to fill up the omission/lacuna or gaps in evidence at the stage of appeal – No additional evidence ought to be permitted to be taken on record, which was well within the knowledge of plaintiff during trial and it could have been adduced during trial – It is duty of litigant to show due diligence: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

– Order 41 Rule 27 – Grounds – Certified copy of registered sale deed – Held – Plaintiff failed to prove that even after exercising due diligence, such document was not in his knowledge nor could he produce it before Court – No sufficient cause disclosed in application, even no pleading regarding said document and fact of sale of land – Taking such document on record would not only result in protracting trial, but would amount to taking document on record without any pleading – Appeal dismissed: *Nathu Vs. Kashibai, I.L.R. (2020) M.P. *25*

– Order 41 Rule 27 and Hindu Succession Act (30 of 1956), Section 15 & 16 – Additional evidence – Suit for declaration, partition and possession – Held – Appellant/defendant has not stated anything as to she had no knowledge of such additional evidence i.e. will and sale-deed, despite due diligence – No reason is given for failure to produce document before trial Court which is sought to be produced in the court of appeal – Appellant/defendant neither in her written statement nor in her statement before the trial Court has stated anything regarding the said will and sale deed – In absence of a plea, no amount of evidence laid in relation thereto can be looked into – Appellant failed to demonstrate existence of grounds as enumerated u/O 41 Rule 27 – Appellate Court has not committed any illegality in disallowing the application u/O 41 Rule 27 – Appeal dismissed: *Ramkuriya Bai (Smt.) Vs. Smt. Kachra Bai (Dead), I.L.R. (2017) M.P. 656*

3. Public Documents

– Order 41 Rule 27 – Public Documents – Held – In the instant appeal, respondents filed application for taking additional document on record – Since all the proposed documents are public documents and are not disputed by the appellant, therefore no further evidence is required to consider them while disposing this appeal, application is allowed: *Manjula Bai Vs. Premchand, I.L.R. (2017) M.P. 1119*

4. Secondary Evidence

– Order 41 Rule 27 and Evidence Act (1 of 1872), Section 65 – Secondary Evidence – Held – Appellant neither produced primary evidence by way of original documents nor sought permission to adduce secondary evidence by filing any application u/S 65 of the Evidence Act and has not filed the certified copy of the said document, then on basis of photocopies, matter cannot be looked into – Further, if Court permitted to adduce secondary evidence, only certified copies of sale deed can be filed as secondary evidence and not photocopies: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

5. Stage of Litigation

– Order 41 Rule 27 – Additional Documents – Stage of Litigation – Additional documents filed before Supreme Court – Held – Application for additional evidence cannot be allowed if appellant was not diligent in producing the same in lower Court, however in the interest of justice and when satisfactory reasons are given, Court can receive additional documents: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Order 41 Rule 27 – Additional Evidence – Hearing of – Petitioner filed an application under Order 41 Rule 27 CPC and prayed to be disposed of as an

preliminary issue – Application was rejected – Challenge to – Held – In the instant case, trial Court has not committed any error while passing the order that application under Order 41 Rule 27 CPC would be decided at the time of final hearing of the appeal – Another application filed under Order 1 Rule 8 CPC by the petitioner which was rejected by the Trial Court is hereby allowed as no objection was forwarded by the counsel for respondents – Petition partly allowed: *Jyoti (Smt.) Vs. Jainarayan, I.L.R. (2018) M.P. 507*

– Order 41 Rule 27 – Additional Evidence before Appellate Court – Decree obtained by fraud – Proof – Held – Appellant had an opportunity to prove the allegation of fraud when he filed an application under Order 41 Rule 27 C.P.C. but he missed that opportunity right up to this Court – Appellant took a second shot at alleging fraud and filed another suit against respondent where his evidence was so weak that it could not be even considered as secondary evidence because of which both the trial Court and High Court rejected the allegation of fraud – Further held – A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent – In the present case, fraud not having been proved but merely alleged, no interference is called for – Appeal dismissed with cost of Rs. 50,000: *Harjas Rai Makhija (D) Thr. L.Rs. Vs. Pushparani Jain, I.L.R. (2017) M.P. 1283 (SC)*

– Order 41 Rule 27 – Additional Evidence – Application for – Held – At appellate stage, if party wants to file any additional evidence, same can only be done by filing a proper application under Order 41 Rule 27 CPC – A printed list of document cannot be treated as an application – Additional evidence cannot be filed at an appellate stage by way of right, but leave has to be obtained explaining the reason for not filing the said evidence at the earliest: *Tarunveer Singh Vs. Mahesh Prasad Bhargava, I.L.R. (2017) M.P. 3028*

– Order 41 Rule 27 – Scope – Held – Provision does not authorize any lacuna or gaps in evidence to be filled up at the stage of appeal – It is the duty of the litigant party to show due diligence: *Pramod Kumar Jain Vs. Smt. Kushum Lashkari, I.L.R. (2020) M.P. 163*

• **– Order 41 Rule 31 & Order 43 Rule 1(r)** – Appeal – Held – Appeal is not against original decree and this Court is not writing any judgment, therefore Order 41 Rule 31 has no applicability – Present appeal is under Order 43 and it is not binding for this Court that appeal has necessarily to be decided on merits and only on basis of material available before Trial Court at the time of deciding application of temporary injunction: *Skol Breweries Ltd. Vs. Som Distilleries & Breweries Ltd., I.L.R. (2018) M.P. 2770*

– Order 43 Rule 1 – Directions in Appeal – Scope & Jurisdiction – *Ex-parte* decree of dissolution of marriage in favour of husband, who, after the limitation period of appeal, married the appellant (*herein*) – First wife's application to set aside *ex-parte* decree was rejected on ground of limitation which was subsequently allowed by High Court directing that *"parties shall live together as husband and wife"* – Held – High Court even after taking note of the fact of second marriage, has given such direction which may not be capable of due performance – Second wife was not even a party to the appeal – Impugned order wholly without jurisdiction and legally unsustainable and thus set aside – Matter remanded to High Court for adjudication afresh after impleading the second wife as party – Appeal allowed: *Karuna Kansal Vs. Hemant Kansal, I.L.R. (2019) M.P. 1978 (SC)*

– Order 43 Rule 1 & 2 – Appeal against order of setting aside judgment and decree and remanding the matter for retrial – In appeal respondent filed two applications, one under Order 6 Rule 17 C.P.C., amendment sought, that u/S 169(2) MPLRC 1959, respondent No. 1 got bhumiswami rights after remaining possession for two years and other application under Order 41 Rule 27 C.P.C. for taking documents on record to show possession over the property, appellate Court allowed both applications – Held – Possession of respondent No. 1 was undisputed, he raised plea of adverse possession also according to appellant the land was given to respondent No. 1 on Ardhbatai, she claimed possession u/S 168 MPLRC, therefore this question can be decided on the basis of material available on record – Certified copy of Khasra can be admitted without any evidence and read in evidence – Merely on producing some additional document, which was already in possession during pendencey of suit, matter should not be remanded to trial Court – Order of remand set aside, appeal allowed: *Sevanti Bai Vs. Babu Singh, I.L.R. (2017) M.P. 885*

– Order 43 Rule 1(a) and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 17 & 34 –Maintainability of Suit – Jurisdiction of Civil Court – Suit for specific performance, permanent injunction and damages by Appellant/Plaintiff – Relief against bank was also claimed which was later on deleted vide amendment – Suit returned to plaintiff on the ground that it is not maintainable u/S 34 of the Act of 2002 – Challenge to – Held – Bank sold the suit property to defendant u/S 13(4) of the Act of 2002 for which appellant was aggrieved, he ought to have filed an appeal u/S 17 of the Act of 2002 – In the instant case, relief clause against bank has been deleted by appellant vide amendment in the suit, he confined his suit against defendant only, for specific performance of agreement – Bar u/S 34 of the Act of 2002 would not apply – Suit would be maintainable – Appeal allowed: *Hariram Vs. Jat Seeds Greeding & warehousing, I.L.R. (2017) M.P. 2192*

– Order 47 Rule 1 – Error apparent on the face of the record – The order impugned has been passed by the Court after due application of mind and after considering the controversy involved – Even if such order is erroneous till some extent same is the matter of appeal, revision or other proceedings – Same cannot be termed as the error apparent on the face of the record as a ground for review – Petition is dismissed: *Shailendra Singh Thakur Vs. State of M.P., I.L.R. (2016) M.P. 1125 (DB)*

– Order 47 Rule 1 – Locus Standi – Review Petition assailing the order on the ground that the W.P. in the nature of P.I.L., itself was not maintainable because the same was in respect of private dispute of some builders who have also filed independent litigation and when they could not get success, P.I.L. was filed at their instance to protect their interest against resolution dt. 23.12.2013 which was passed before communication of notification dated 23.12.2013 made in respect of dissolution of Board of Directors of J.D.A. – Held – Impugned order was passed in the presence of all the parties impleaded in such petition – Applicant was not a party in that petition – Therefore, he did not have any locus standi to file this review petition: *Shailendra Singh Thakur Vs. State of M.P., I.L.R. (2016) M.P. 1125 (DB)*

– Order 47 Rule 1 r/w Section 114 – Review – When there is no error apparent on the face of the record , no case for review is made out – Review petition dismissed: *Rajendra Kumar Solanki Vs. M.P. Rural Road Development Authority, I.L.R. (2016) M.P. 2295 (DB)*

CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, M.P., 1966

SYNOPSIS

1. Charge Sheet/ Show Cause Notice

– Rule 10(6) & 14 – Delayed Charge Sheet and Show Cause Notice – Explanation – Held – Charges leveled for alleged misconduct of 21 years ago –

Explanation for such inordinate delay is totally insufficient and vague – Delay not properly explained – No point to continue with such delayed charge sheet – Charge sheet and show cause notice are quashed – Petition allowed: *Amrat Singh Dhakad Vs. State of M.P., I.L.R. (2017) M.P. *101*

2. Compulsory Retirement

– Rule 14 and Police Regulations, M.P., Regulation 270 – Compulsory retirement – Enquiry officer has treated the news paper report as gospel truth – The Enquiry Officer's report stands vitiated, not only this, the Preliminary Enquiry conducted behind the back of the petitioner has also been relied by the Enquiry Officer – Enquiry Officer on the basis of Preliminary Enquiry Report held the petitioner guilty and he has been thrown out of the job without there being any substantive evidence – Appellate authority has also not at all considered the service record of the petitioner and dismissed the appeal in a most casual and mechanical manner – Therefore, inquiry report and appellate order quashed – Petitioner reinstated in service – Petition allowed: *Santosh Bharti Vs. State of M.P., I.L.R. (2016) M.P. 3282*

3. Departmental Enquiry

– Rule 3 & 4 – Documents – Departmental enquiry – Charges levelled against petitioner were not vague or incapable of understanding the same – Rule 3 & 4 of Rules, 1966 do not contemplate supply of documents along with charge-sheet – Only requirement is to forward a list of documents, by which charges are proposed to be proved – Record shows that all the documents were supplied during the course of enquiry – Petitioner also did not raise any objection with regard to production of documents – Non supply of documents which were not considered by Enquiry Officer would not prejudice the petitioner – Writ Court has gone into each and every aspect of the matter in detail and has recorded a finding to say that the order passed by the Disciplinary Authority and findings recorded by Enquiry Officer is legal and proper – No reason to interfere with the reasonable judgment and decree passed by the writ Court: *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 689 (DB)*

– Rule 9 – Argument that after superannuation the appellant was retired from the services and therefore, no departmental enquiry can be initiated against him – No such argument was advanced before the writ court nor the said ground was taken in the writ appeal and therefore the said contention cannot be accepted at this stage in this writ appeal: *Guman Singh Damor Vs. State of M.P., I.L.R. (2017) M.P. *5 (DB)*

– Rule 10 – Departmental Enquiry – Perverse finding – Allegation – The petitioner instigated the parents of accused to meet the Presiding Officer to get bail

for their son – Departmental Enquiry conducted – Petitioner found guilty – Held – In absence of any specific evidence to show that the petitioner has instigated the parents to go and visit the Presiding Officer, the finding is perverse – Order quashed: *Pooran Singh Sisodia Vs. High Court of M.P., I.L.R. (2017) M.P. 81 (DB)*

– Rule 14 – Departmental Enquiry – Misconduct – Petitioner, Class IV employee – Posted as Process Server – Called upon to do work of Water server – Refusal to do so – Departmental enquiry – Removal from service – Held – It is not a case of petitioner that Process Server cannot be called upon to do work of Water Server, removal justified as it is a case of insubordination and disregarding the instructions given by the superiors – Petition dismissed: *Raj Kumar Vishwakarma Vs. State of M.P., I.L.R. (2016) M.P. 115 (DB)*

– Rule 14 – Departmental Enquiry – Object of Preliminary Inquiry – To explore as to whether a regular departmental enquiry is necessary: *Pooran Singh Sisodia Vs. High Court of M.P., I.L.R. (2017) M.P. 81 (DB)*

– Rule 14 – Departmental Enquiry – Practice and Procedure – Regular departmental enquiry ordered after Preliminary Inquiry – Delinquent employee was supplied statement of witnesses recorded in preliminary inquiry – No prejudice caused to employee: *Pooran Singh Sisodia Vs. High Court of M.P., I.L.R. (2017) M.P. 81 (DB)*

– Rule 14(11) – Adjournment – Appointing Defence Assistant – Non-compliance of Rule 14(11) – Held – Adjournment sought for was not for taking inspection or for submitting list of witnesses, so not in conformity with time period specified in Rule 14(11) – Contention not tenable: *Raj Kumar Vishwakarma Vs. State of M.P., I.L.R. (2016) M.P. 115 (DB)*

– Rule 29 – Departmental Enquiry – Second Charge-sheet – Maintainability – Held – Petitioner earlier exonerated of similar charges which has been levelled against him in second charge-sheet, issued under instructions of Lokayukt – Once an order has been passed under CCA Rules, 1966, it can only be reviewed in accordance with provisions of Rule 29, which has not been exercised in present case – No rule pointed out empowering respondents to initiate second departmental enquiry on similar allegations – Subsequent charge-sheet quashed – Petition allowed: *RN Mishra Vs. State of M.P., I.L.R. (2019) M.P. *56*

4. Disciplinary Authority / Inquiring Authority

– Rule 10 & 15(3) – Disciplinary Authority & Inquiring Authority – Held – If disciplinary authority is not an inquiring authority, it is incumbent on him to apply his own mind while recording findings prior to proposing penalty – In subsequent notice,

nothing is referred why the earlier findings were inappropriate which required to be changed proposing penalty of dismissal – Provision of Rule 15(3) not complied by Disciplinary Authority: *K.K. Sharma Vs. M.P. Power Management Co. Ltd., I.L.R. (2017) M.P. 2657*

– Rule 15, proviso – Consultation with Commission – Held – Requirement of consultation by disciplinary authority with Public Service Commission is only directory in nature – Non-compliance of same do not vitiate the order of disciplinary authority: *Anil Pratap Singh Vs. State of M.P., I.L.R. (2020) M.P. 1858*

– Rule 15(3) – Competent Authority – Held – The power of the disciplinary authority conferred under statute to the officer ought not be exercised by other officer, holding the current charge: *K.K. Sharma Vs. M.P. Power Management Co. Ltd., I.L.R. (2017) M.P. 2657*

– Rule 15(3) – It deals with the action on enquiry report – In every case where it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the government servant: *Sunil Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 72*

– Rule 20 – Since enquiry had already been initiated, same would continue and after finalization of departmental enquiry and before taking any action, the borrowing authority under Sub-Rule 2 of Rule 20 shall proceed to transmit the proceeding and the record of the departmental enquiry to the lending authorities as the case may – The power of Disciplinary Authority to take disciplinary action made available to the borrowing department/authority up till delinquent employee was serving in the said department but not after when he had gone back to the parent department: *Rajendra Kumar Solanki Vs. M.P. Rural Road Development Authority, I.L.R. (2016) M.P. 2295 (DB)*

5. Dismissal/Penalty

– Rule 10 & 15 – Imposition of penalty – Dismissal from Service – Vague charge – Disciplinary authority is required to apply its mind while recording findings on article of charge levelled against the delinquent employee – Disciplinary authority has not recorded its own finding on all or any article of charge levelled against the delinquent employee and has also not framed its own opinion as to which penalty under Rule 10 is to be imposed: *R.K. Vishwakarma Vs. The M.P. State Electricity Board, I.L.R. (2016) M.P. 1035*

– Rules 10, 15 & 27 – Dismissal from Service – Imposition of severest penalty – Vague charge – Charge framed against petitioner was not indicative of

grave misconduct of embezzlement by himself or by his collaboration with main culprit – Charge framed against petitioner was vague in nature and was not constituting a misconduct sufficient for imposing severest penalty – Held – Charges as framed against the petitioner were not definite and vague in nature, therefore, not constituting a misconduct sufficient for imposing the penalty of dismissal from service – Defence was also not considered – Impugned order is not sustainable: *R.K. Vishwakarma Vs. The M.P. State Electricity Board, I.L.R. (2016) M.P. 1035*

– Rule 10 & 27 – Imposition of penalty – Dismissal from Service – Vague charge – Appellate Authority has also not decided that whether on the basis of charge so levelled against the petitioner, penalty of dismissal from service could be imposed – Impugned order is not sustainable – Petition is allowed: *R.K. Vishwakarma Vs. The M.P. State Electricity Board, I.L.R. (2016) M.P. 1035*

– Rule 10 and Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Departmental enquiry – Whether penalty on retired Govt. servant can be imposed for enquiry initiated while he was in service – Held – Yes, as per Rule 9 of the Pension Rules, 1976 the penalty can be imposed: *Saroj Kumar Shrivastava Vs. State of M.P., I.L.R. (2016) M.P. 774*

– Rule 14 – Punishment from removal of services – Whether excessive or not – Held – It is a case of insubordination and disregarding the instructions of seniors, so it is a major misconduct – In one sense it is a lighter punishment – Petition dismissed: *Raj Kumar Vishwakarma Vs. State of M.P., I.L.R. (2016) M.P. 115 (DB)*

– Rules 14, 16 & 27 – Assessment of shortage in the stock and recovery – Since there was no proper assessment of loss caused to the State and the petitioner was also not afforded an opportunity to cross examine the authority who has conducted physical verification, the same was not to be made foundation of penalty on the petitioner – Recovery of the amount of the loss from the petitioner cannot be sustained – Petition allowed: *Rajkumar Rachandani Vs. State of M.P., I.L.R. (2016) M.P. 435*

– Rules 14, 16 & 27 – Order imposing penalty of withholding of increment with cumulative effect and recovery of Rs. 1,02,349/- assailed on the ground that if a major penalty is required to be imposed, a detailed enquiry as provided under Rule 14 should have been conducted whereas no enquiry was conducted and the assessment of loss was not also done in accordance with circular issued in that regard – Held – Rule 14 & 16 – Procedure for imposing penalty – Authority's intention was to impose major penalty which is evident from show cause notice – A charge sheet should have been issued and detailed enquiry was to be conducted in accordance with Rule 14 – Procedure adopted to impose major penalty cannot be sustained: *Rajkumar Rachandani Vs. State of M.P., I.L.R. (2016) M.P. 435*

– Rules 14(3) to (23) & 16(1)(b) – Misconduct – Penalty – Detailed Inquiry – Reasonable Opportunity – Held – Petitioner categorically denied misconduct alleged in show cause notice and gave explanation to demonstrate innocence – It was incumbent upon Disciplinary authority especially when misconduct was factual in nature, to conduct full scale inquiry under Rule 14(3) to (23) of the Rules of 1966 to satisfy the concept of "Reasonable Opportunity" – Impugned orders of punishment not sustainable and are set aside – Petition allowed: *Rahmat Noor Khan Vs. State of M.P., I.L.R. (2018) M.P. 2716*

– Rule 14(5)(b), Rule 14(ii) and Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Departmental enquiry – Penalty of withholding 50% pension of the Petitioner for a period of 5 years – Lapses on part of the Respondents – First show cause notice issued on 25/02/1984 and upto 26/7/1995 notices were sent – Enquiry report submitted on 05/03/1999 – Enquiry kept pending for 14 years – No witnesses examined – Petitioner retired on 31/12/2001 – Imposition of penalty on 20/01/2006 – Held – As the lapses on part of the Govt. was so grave that penalty of withholding of 50% pension for a period of five years set aside – Withheld amount of pension be paid – Petition allowed: *Saroj Kumar Shrivastava Vs. State of M.P., I.L.R. (2016) M.P. 774*

– Rule 15(3) & 29 – Dismissal – Procedure – Departmental enquiry – Penalty of withholding three increments inflicted – Later, again a notice issued for dismissal – Writ petition filed whereby stay was granted – Department withdrew the notice for dismissal and maintained previous penalty – Petition dismissed as infructuous – Again a notice issued and petitioner was dismissed – Held – Such order of dismissal would be in defiance to order of Court – Such dismissal is arbitrary and illegal – Provisions of Rule 15 and 29 not complied with – Impugned orders quashed – Petitioner directed to be re-instated if not attained age of superannuation, but will have to suffer the earlier penalty imposed – Petition partly allowed: *K.K. Sharma Vs. M.P. Power Management Co. Ltd., I.L.R. (2017) M.P. 2657*

– Rule 16(1)(b) – Opinion – Held – Material on record shows no application of mind by competent authority while forming opinion as contemplated u/S 16(1)(b) of the Rules of 1966 – Such opinion should be reflected either in penalty order or at least be part of the record of disciplinary proceedings – State has not produced any material to satisfy that any such opinion was formed before passing the order of penalty – Relevant aspects for formation of opinion enumerated: *Rahmat Noor Khan Vs. State of M.P., I.L.R. (2018) M.P. 2716*

– Rule 16(1)(d) – Service Law – Minor Penalty – Stoppage of one increment without cumulative effect – Scope of interference of High Court – Held – Rule 16(1) requires that before passing any order of minor punishment, the concerned employee should be served with a show cause notice and order of minor penalty can be passed

after affording opportunity of furnishing reply – High Court not to sit as an appellate authority over the decision of disciplinary authority inflicting minor penalty of stoppage of one increment: *Om Prakash Dixit Vs. State of M.P., I.L.R. (2016) M.P. 2528*

– Rule 27(2)(iii) – Penalty – Enhancement – Held – Order of minor penalty could not have been modified after penalty period was over and minor penalty order was fully implemented – Order enhancing the punishment passed after 5 years of passing of original order – Such belated order lacks bonafide – Order imposing major penalty is set aside: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

– Rule 29 – Power of Review – Procedure – Held – If earlier order of penalty is required to be changed to enhance penalty, it would amount to review of earlier order and such power can be exercised by appellate authority – In present case, subsequent notice or order of penalty has not been passed by appellate authority reviewing previous order: *K.K. Sharma Vs. M.P. Power Management Co. Ltd., I.L.R. (2017) M.P. 2657*

– and All India Services (Discipline and Appeal) Rules, 1955 – Applicability – Rules of 1955 shall be applicable to regulate the punishment of and appeals from officers belonging to Indian Police Service and the CCA Rules to the State Police Service: *Ashish Singh Pawar Vs. State of M.P., I.L.R. (2017) M.P. 2124*

6. Principle of Natural Justice

– Rules 14(18), 14(23)(i) & 15 – Enquiry Report – Procedure – Natural Justice – Non-supply of enquiry report to petitioner is breach of natural justice – Advice of the UPSC should also be supplied in advance before imposing the punishment – Further, Enquiry report is non-speaking and is cryptic – Enquiry Officer failed to record its findings on the charges leveled against petitioner – No marshalling of Evidence – Entire enquiry is in violation of natural justice – Impugned orders quashed – Petition allowed: *Harish Kumar Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *156*

– Rule 15(2) – Show Cause Notice & Opportunity of Hearing – Natural Justice – Dismissal from Service – Held – Rule 15(2) is mandatory and disciplinary authority is under legal obligation to issue a show cause notice and to afford opportunity of hearing in case of disagreement with findings of Inquiry Officer – Impugned order of punishment violates the provisions of Rule 15(2) of the Rules of 1966 and also the principle of natural justice – Impugned orders quashed and matter remanded back to disciplinary authority – Petition disposed: *Ram Krishna Kanade Vs. State of M.P., I.L.R. (2017) M.P. *120*

7. Suspension/Revocation

– Rule 9 – Suspension – Scope of Judicial Review – Held – Apex Court concluded that order of suspension should not ordinarily be interfered with unless it has been passed with *malafide* and in absence of *prima facie* evidence connecting the delinquent with misconduct in question – Three charges against R-4 out of which only one relates to death of four persons due to poisonous liquor consumption, other charges relates to dereliction of duty – Looking to nature of charge and role of R-4, suspension not justified and hence rightly quashed: *Neerja Shrivastava Vs. State of M.P., I.L.R. (2020) M.P. 1532 (DB)*

– Rule 9 and Fundamental Rules, Rule 54 B – Suspension – Petitioner was placed under suspension in contemplation of departmental enquiry – Departmental enquiry culminated in imposition of penalty of Censure – Period of suspension was directed to be treated in service for all purposes but the allowances were confined to suspension allowance – Suspension should have been held unjustified as the employee was inflicted with penalty of "Censure" and if suspension is treated to be justified, then such employee is subjected to loss of wages – Technically it may not be double jeopardy but certainly effects the wages of employee – Impugned order set aside: *Sudhir Kamal Vs. M.P.P.K.V.V. Co. Ltd., I.L.R. (2016) M.P. 1681*

– Rule 9(1) – Held – As per Rule 9(1), an employee can be placed under suspension (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial: *Umesh Shukla Vs. State of M.P., I.L.R. (2017) M.P. 807*

– Rules 9(1)(a), 9(5)(a), (2-a) & (2-b) – Disciplinary Enquiry and Criminal Investigation/Enquiry – Automatic revocation of suspension order, if charge-sheet not filed within 90 days – Held – Conjoint reading of these rules, makes it clear that question of automatic revocation of suspension would arise when employee is placed under suspension because of disciplinary proceeding as per Rule 9(1)(a) of the Rules but in the present case, petitioner was not suspended because of any disciplinary proceeding, but was suspended because an investigation for a criminal offence was going on – In such circumstances, there is no provision in the Rules that suspension would automatically revoked after 90 days – Further held – Despite pendency of a criminal investigation/enquiry, the employer may initiate a disciplinary proceeding against the employee – In the present case, there is nothing to show that order has been passed under the dictate of Lokayukt rather the same has been passed with proper application of mind and necessary ingredients for placing the petitioner under suspension is taken into account – Petition dismissed: *Umesh Shukla Vs. State of M.P., I.L.R. (2017) M.P. 807*

8. Unauthorized Leave/Willful Absence

– Rule 27, Civil Services (Leave) Rules, M.P. 1977, Rule 24(2) and Fundamental Rules, M.P., Rule 17 A – Unauthorized Leave/Willful Absence – "Dies Non" – Effect – Held – Treating the period of unauthorized absence/leave as "dies non" does not result into break in service and thus seniority is maintained – Fundamental Rule 17A is without prejudice to Rule 27 of 1966 – Order, treating the period of absence as "dies non" is only an accounting and administrative procedure to avoid break in service in terms of Fundamental Rule-17 A and thus it is partly in favour of petitioner and cannot be treated to be punitive and stigmatic order – Impugned order does not suffer from any error: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

9. Voluntary Retirement

– Rule 19(2) – Voluntary Retirement – Retiral Dues and Enquiry – Held – Entire enquiry regarding appointment of petitioner is illegal as the same is initiated behind his back after completion of 30 yrs. of service – Respondents cannot initiate departmental enquiry or any action which is prejudicial to petitioner after expiry of one month's notice as stipulated in application for voluntary retirement – Petitioner entitled for all retiral benefits – Impugned proceedings and order quashed – Petition allowed: *Sunil Thomas Vs. State of M.P., I.L.R. (2019) M.P. 1816*

10. Miscellaneous

– Rule 3(1)(d) & 29(1)(iii) – See – Service Law: *Ashish Singh Pawar Vs. State of M.P., I.L.R. (2017) M.P. 2124*

– Rule 9 – See – Civil Services (Conduct) Rules, M.P. 1965, Rule 3: *Nahid Jahan (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2947*

– Rule 9(2)(a) – See – Service Law: *Municipal Corporation, Jabalpur Vs. State of M.P., I.L.R. (2017) M.P. *127 (DB)*

– Rule 14 & 15 – See – Service Law: *Pramod Kumar Agrawal Vs. State of M.P., I.L.R. (2017) M.P. *119 (DB)*

– Rule 14(23) – See – Service Law: *Rudrapal Singh Chandel Vs. State of M.P., I.L.R. (2017) M.P. 2333*

– Rule 15(2) – See – Service Law: *Ashok Sharma (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 2173*

– Rule 18 – See – Service Law: *R.K. Rekhi Vs. M.P.E.B., Rampur, Jabalpur, I.L.R. (2018) M.P. 906*

– Rule 19 – See – Service Law: *Prem Chand Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. 1636*

– Rule 22(i) & 23 – See – Service Law: *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696 (FB)*

– Rule 23 & 24(1)(i)(b) – See – Service Law: *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696 (FB)*

– Rule 27(2) – See – Service Law: *S.K. Agarwal Vs. State of M.P., I.L.R. (2017) M.P. 1840*

CIVIL SERVICES (CONDUCT) RULES, M.P., 1965

– Rule 3 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Misconduct – Suspension – Grounds – Held – Commissioner exercised the power to place petitioner under suspension without there being any justification – Wordings of suspension order shows that allegation relates to a clerical error of including a dead person in portal – No irreparable loss or damage caused to department which necessitated issuance of suspension order – Suspension order issued mechanically and in a routine manner – Exercise of power is arbitrary and is set aside – Petition allowed: *Nahid Jahan (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2947*

CIVIL SERVICES (GENERAL CONDITIONS OF SERVICE) RULES, M.P., 1961

– Rule 3(c) & 6(6) – See – Service Law: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 1394 (DB)*

– Rule 6 – See – Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7, 9 & 10: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627 (FB)*

– Rule 6 – Termination – Verification for Regularization – Non-Disclosure of Criminal Case – Effect – Held – Appellant cannot be thrown out after 18 years of service just on technical ground of non-disclosure of criminal case in verification form for regularization, especially when he kept the department well apprised regarding pendency of such case – He also submitted a subsequent affidavit disclosing the said fact – No intention to conceal facts, thus not guilty for suppression – Further, appellant was acquitted in the said case not on technical grounds or compromise but on merits – Impugned order quashed – Re-instatement directed – Appeal allowed: *Shyam Singh Lodhi Vs. State of M.P., I.L.R. (2019) M.P. 2441 (DB)*

– Rule 6(6) – See – Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P., 1994, Rule 5(1)(c): *Bhagyashree Syed (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2119 (DB)*

CIVIL SERVICES (LEAVE) RULES, M.P., 1977

– Rule 24 – Absence after expiry of leave – Adverse Entry – Petitioner working on the post of Sub-Inspector of Police – Adverse entry was made in his confidential report on being remained unauthorizedly absent from duty – Rule 24 of Rules, 1977 provides for taking action for absence after expiry of leave – No action under Rule 24 was taken – Adverse entry made in confidential report without making any enquiry is unwarranted – Adverse entry quashed – However, respondents given liberty to take action against the petitioner as per Rule 24 of Rules, 1977: *Himmat Singh Parihar Vs. State of M.P., I.L.R. (2016) M.P. 476*

– Rule 24(2) – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

CIVIL SERVICES (PENSION) RULES, M.P., 1976

SYNOPSIS

1. Criminal/Judicial Proceedings

– Rules 8, 9(4), 9(6)(b) & 64 – Gratuity & Pension – Criminal Proceedings – Effect – Held – Criminal proceedings shall be deemed to be instituted on the date, Magistrate takes cognizance – Division Bench of this Court has concluded that retired employee against whom criminal case has been instituted after retirement is entitled for full pension and gratuity – In present case, Magistrate took cognizance after retirement of petitioner, judicial proceedings are pending and petitioner is not yet convicted or found guilty of grave misconduct – Impugned order withholding 50% gratuity amount and denial of full pension is set aside – Petition allowed: *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *34*

– Rule 9(6)(b) – Institution of Judicial Proceedings – Relevant Date – Held – Date of making complaint or report to police, is the date of institution of judicial proceedings – Petitioner retired on 31.12.2015 – Although challan filed on 05.02.2016 but offence was registered on 14.09.15, hence judicial proceedings will be deemed to

be pending on date of retirement – Part of pension & gratuity rightly withheld – Petition dismissed: *Chandramani Tripathi Vs. State of M.P., I.L.R. (2020) M.P. 692*

2. Disciplinary Proceedings/Sanction

– Rule 9(2)(b)(i) – Disciplinary Proceedings – Sanction of Governor – Jurisdiction – Held – It is not necessary to obtain personal sanction of Governor of M.P. for taking decision to initiate disciplinary proceedings and if Council of Ministers have taken such decision, it will serve the purpose and meet the requirement of Rule 9 of the Rules of 1976 – Charge sheet served to petitioner in the name of Governor of M.P. cannot be said to be without jurisdiction – Apex Court concluded that such an order authenticated in name of Governor cannot be questioned in any Court on ground that it is made or executed by the Governor and thus is outside the scope of judicial review – No interference required – Appeal dismissed: *Shanti Bavaria (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *148 (DB)*

3. Dismissal

– Rule 9(2)(a) – Held – It is prerogative for employer to continue with same enquiry, if the charge sheet was issued when government servant was in employment – However, punishment of dismissal cannot be imposed once the employee attains the age of superannuation: *Duryodhan Bhavtekar Vs. State of M.P., I.L.R. (2020) M.P. 1877*

4. Principle of Natural Justice

– Rule 9 – Petitioner challenging the order of withholding 100% pension and clause (Kha) of GAD circular no, C-6-2/98/3/1 dated 08.02.1999 – Held – As per language of circular, first part denies the applicability of principle of natural justice which is foundational and fundamental concept against undue exercise of power of authority – Principle of natural justice consist with two components "Audi Alteram Partem" i.e., nobody shall be condemned unheard and "Nemo debtet esse Judex in propria Sue causa", i.e. Nobody shall be judge in own case – Audi Alteram Partem is fundamental in governance to the rule of Law – The principle of natural justice is implied even the statute do not contemplate so, particularly when the order passed by authority is prejudicial to the affected person, and effects the civil consequences, otherwise the order cannot be said to have passed with fairness and judicially – Condition of denial of issuance of notice and affording an opportunity in the circular is arbitrary, unfair and unjust: *Nirmal Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 856*

5. Voluntary Retirement

– Rule 42 – Deemed Permission – Voluntary retirement can be presumed – If no action taken within six months – Even in circumstance (ii): *Harendra Jaseja (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 384*

– Rule 42 – Voluntary retirement – Date of retirement – Notice indicating the particular period of time – Held – In absence of any rejection within such period same will become operative from the date on completion of notice period: *Harendra Jaseja (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 384*

– Rule 42 – Voluntary retirement – Prior permission – Requirement – Rule 42 – Nowhere prescribes for express permission – Except circumstances (i) & (ii): *Harendra Jaseja (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 384*

– Rule 42 – Voluntary retirement – Requirement of prior permission – Circumstances – (i) where the Government servant is under suspension (ii) where it is under consideration of the appointing authority to institute disciplinary action against the Government Servant: *Harendra Jaseja (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 384*

– Rule 42(a) – Voluntary Retirement – Deemed Acceptance – Held – In respect of voluntary retirement application, Rule 42(a) does not require any order or acceptance letter to be issued by appointing authority – It is deemed to be accepted after completion of one month notice period as stipulated in the application: *Sunil Thomas Vs. State of M.P., I.L.R. (2019) M.P. 1816*

6. Miscellaneous

– Rule 65 – Held – Rule 65 of the Rules of 1976 casts duty on the "Retiring" government servant and it has nothing to do with the "Retired" government servant – Rule 65 is not applicable to "Retired" government servant: *Vijay Shankar Trivedi Vs. State of M.P., I.L.R. (2018) M.P. 682*

– and Work Charged and Contingency Paid Employees Pension Rules, M.P., 1979 – Applicability – Held – Pension Rules of 1979 provides for grant of pension to contingency paid employees under the provisions of Rules of 1976 but the same is not vice-versa: *Kanhaiyalal Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2019) M.P. 2476*

– Work Charged and Contingency Paid Employees Pension Rules, M.P., 1979 and Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952) – Applicability – Held – Decision of applicability of Act of 1952 is pending before the Principal Bench – If Court comes to conclude that provisions of Act of

1952 are not applicable to university then petitioner may revive his claim under Rules of 1976 or Rules of 1979: *Kanhaiyalal Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2019) M.P. 2476*

– Work Charged and Contingency Paid Employees Pension Rules, M.P., 1979 and JNKVV Service Pension Rules, 1987 – Entitlement of Pension – Held – Petitioner, an employee of JNKVV, a University which has its own Pension Rules and has taken a decision to grant pension under the Rules of 1976 only to its full-time/regular employees and not to persons in work charged and contingency establishment paid from contingency fund – As the University, has not adopted the Pension Rules of 1979, petitioner not entitled for pension under the Rules of 1979 – Petition dismissed: *Kanhaiyalal Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2019) M.P. 2476*

– Rule 9 – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 (5) (b), Rule 14 (ii): *Saroj Kumar Shrivastava Vs. State of M.P., I.L.R. (2016) M.P. 774*

– Rule 9 – See – Prevention of Corruption Act, 1988, Section 13(1) & 13(2): *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *38 (DB)*

– Rule 9 – See – Service Law: *Prem Chand Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. 1636*

– Rule 23 – See – Service Law: *Mohan Pillai Vs. M.P. Housing Board, I.L.R. (2018) M.P. *18*

– Rule 26 – See – Service Law: *Rewa Prasad Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 1648*

– Rule 42 – See – Service Law: *Shanti Verma (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2134*

– Rule 47(6) – See – Service Law: *Krishna Gandhi (Mrs.) Vs. State of M.P., I.L.R. (2018) M.P. 1427*

– Rule 66 – See – Service Law: *Ramnarayan Sharma Vs. State of M.P., I.L.R. (2017) M.P. 1324 (DB)*

CIVIL SERVICES (SPECIAL PROVISION FOR APPOINTMENT OF WOMEN) RULES, M.P., 1997

– Rule 3 – Horizontal & Vertical Reservation – Migration from One Category to Another – Held – Rule 3 prescribes horizontal and compartment-wise reservation for each category (Gen/OBC/SC/ST) – Allotment of earmarked seats would be made

in strict sensu, in case of horizontal reservation, categorywise – There cannot be any migration on basis of merit in Horizontal reservation as what is permissible in vertical reservation – Revised list quashed – Petitions disposed: *Pinki Asati Vs. State of M.P., I.L.R. (2020) M.P. 1299 (DB)*

– Rule 3 – "Placement in Merit List" & "Allotment of Earmarked Seats" – Distinction – Held – Placement in merit list is one thing and the allotment of earmarked seat/post is a distinct process – A woman candidate of OBC category if scores higher marks than a General category candidate, she has to be allotted a seat in OBC(female) in her own category and not a seat in unreserved female category: *Pinki Asati Vs. State of M.P., I.L.R. (2020) M.P. 1299 (DB)*

CLASS III (NON-MINISTERIAL AND MINISTERIAL) JAIL SERVICE RECRUITMENT RULES, M.P., 1974

– Schedule Sr. No. 7 & 8 – See – Service Law: *State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla, I.L.R. (2017) M.P. *149 (DB)*

COAL MINES (SPECIAL PROVISIONS) ACT (11 OF 2015)

– Section 3(a)(n) & 4(4) – "Promoters" or "any of its company" of such prior allottee – Petitioner established a Power Plant for generating electricity – Petitioner was sourcing coal extracted from Coal Mine operated by sister concern of Petitioner – Allocation of Coal Mines to sister concern of Petitioner was annulled pursuant to the decision of Supreme Court in W.P. (Cri) 120/2012 – Bids were invited for subject coal mines as per the provisions of Act, 2015 – Whether Petitioner is eligible to participate in bid or it fits into the expression "its promoter" or "any of its company" – Held – Associate Company must be held to be covered by the expansive expression used in Section 4(4) –Petitioner itself has described itself to be a sister concern of defaulter prior allottee company but it also has significant influence and control of common promoter and his financial stakes and including the fact that petitioner was dependent on the supply of coal from prior allottee only – Petitioner has also admitted that prior allottee has not paid/deposited the additional levy as directed by Supreme Court – Share holding pattern of both companies is an alter-ego of defaulter prior allottee: *B L A Power Pvt. Ltd. Vs. Union of India, I.L.R. (2016) M.P. 129 (DB)*

– Section 3(a)(n) & 4(4) – "Promoters" or "any of its company" of such "prior allottee" – Reasonable or direct nexus – The provision certainly has reasonable or direct nexus with the object sought to be achieved, to keep away the defaulter prior allottees from participating in the auction process directly or indirectly, through

the cobweb of Companies created or in existence to defeat the direction of Supreme Court regarding payment or recovery of additional levy from them: *B L A Power Pvt. Ltd. Vs. Union of India, I.L.R. (2016) M.P. 129 (DB)*

COLLEGE CODE

– Statute 28 – See – Vishwavidyalaya Adhiniyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j): *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299 (FB)*

COMMERCIAL TAX ACT, M.P., 1994 (5 OF 1995)

– Sections 2(c), 2(h) & 9 – Imposition of Export Tax – Municipal Limits – Held – Mere physical location of branch outside the municipal limits could not have been construed to deem it to be an independent identity since for all accounting purposes, accounts of branch are to be accounted with the dealer i.e principal – Any transaction made by branch was in capacity of agent to principal whose office was located in the municipal limits and hence export will be deemed to have been made from territorial jurisdiction of municipality – Imposition of export tax and bill raised for recovery cannot be said to be illegal and without jurisdiction – Appeal allowed – Impugned judgment and decree set aside: *Nagar Palika Parishad Vs. Anil Kumar, I.L.R. (2018) M.P. 721*

– Section 14 & 27(8) – Applicability – Held – Applicable for assessment proceedings and not for penalty proceedings: *Sadguru Fabricators & Engineers P. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2199 (DB)*

– Section 45-A(10) & (12) – Imposition of Penalty – Penalty has to be exercised judiciously – Deliberate defiance of Law, guilty conduct and dishonest intentions are necessary ingredients for imposing penalty – Technical or Venial breach of a statutory provision by itself not reason for imposing penalty – Finding should be recorded as to whether there was intention to evade tax – Mere non production of a document, i.e. form no. 75 does not establish intention on the part of company to evade law – Technical lapse unaccompanied by mala fide or dishonest intention can be classified as bona fide mistake – Imposition of penalty set aside – Petition allowed: *Mena Transport (Ms.) Vs. Assistant Commissioner of Commercial Tax, I.L.R. (2016) M.P. 371 (DB)*

– Section 69(1) and General Sales Tax Act, M.P. 1958 (2 of 1959), Section 43(1) – Same substance – Burden of proof of penalty is on the department not on assessee – Section 69(2) – Period of limitation – When matter is remitted back to the Assessment Officer, penalty proceedings has to be concluded within one calendar year: *Sadguru Fabricators & Engineers P. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2199 (DB)*

– Section 70(1) – See – Limitation Act, 1963, Section 5: *Hawkins Cookers Ltd. (M/s.) Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (2019) M.P. 2261 (DB)*

– Schedule II, Part III, Entry No. 9 – Lubricants – Brake Fluid – Held – Brake fluid is a different kind of liquid altogether which is never used for purpose of lubricating either the brake or any part which is under the braking system – Brake fluid and Lubricants are different and cannot be treated under one entry for the purpose of taxation – Impugned orders quashed – Petitions allowed: *Castrol India Ltd. (M/s.) Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2017) M.P. *133 (DB)*

COMMERCIAL TAX DEPARTMENT SUBORDINATE TAXATION SERVICES (CLASS III – EXECUTIVE) RECRUITMENT RULES, M.P., 2007

– Rule 4 & 6 – Recruitment – Written Examination – Revaluation – Held – There exist no statutory rule, regulations, provision or legal right providing for revaluation of the answer sheet – Rule of 2007 do not provide for any revaluation – Prayer rejected: *Hemant Bakolia Vs. State of M.P., I.L.R. (2019) M.P. 305*

– Rule 4 & 6 – Recruitment – Written Examination – Rounding off of Marks – Petitioner seeking rounding off of marks as he was awarded 44.75 marks where as cut off marks for him was 45 – Held – Petitioner not entitled for rounding off of marks because of the express language of the Rules and even it does not provide for rounding off of marks – When Rule itself provides for obtaining minimum marks and lays emphasis thereon, principle of rounding off cannot be applied – Permitting rounding off in such a case would be contrary to the expressed provisions of the Rule – Petitioner's name rightly excluded from select list – Petition dismissed: *Hemant Bakolia Vs. State of M.P., I.L.R. (2019) M.P. 305*

COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005 (4 OF 2006)

– Applicability – United Nations Convention – Chief Justice of Madhya Pradesh High Court has directed for circulation of the 'Child access & custody guidelines' and pertaining Plan for guidance, among Additional District Judges, Family Court Judges & marriage counsellors in State of M.P. – Convention ought to be followed by competent courts having power to declare guardian – Under Act of 2015 and Rules framed thereunder, Child Welfare Committee is not conferred with power to give custody of the child – In a case wherein due to dispute between husband and wife proceedings are pending between them, Child Welfare Committee cannot direct visitation right to meet child either to husband or wife – Powers exercised by the

Committee is contrary to law – Order set aside – Petition allowed: *Priya Yadav Vs. State of M.P., I.L.R. (2017) M.P. 605*

– Section 25 – Children's Court – Jurisdiction – Every offence in which a 'child' happens to be a complainant or a victim is not compulsorily triable under the Act of 2005, unless in respect of it, a proceeding has been initiated by concerned government or authority on the recommendation of the commission constituted under the Act of 2005 – If commission finds "violation of child rights of a serious nature" or "contravention of provisions of any law for the time being in force", then on the recommendation, case shall be deemed to be cognizable and triable by specified "Children's Court" constituted u/S 25 of the Act of 2005 otherwise in all other cases, ordinary procedure provided under the CrPC is to be followed – Reference answered with directions: *In Reference Vs. Jitendra, I.L.R. (2017) M.P. 1223*

COMPANIES ACT (1 OF 1956)

– Section 10 F – Appeal – Condonation – Appeal filed with delay of 131 days – Held – Under Section 10 F, including original and extended period, limitation is only of 120 days from date of communication of order – Word 'not exceeding' in proviso reflect that after expiry of original period of 60 days only 60 days can be condoned and no delay beyond that can be condoned – Section 5 r/w Section 29 of Limitation Act not applicable in case, because Companies Act not only provides the period of limitation but also prescribes outer limit for condoning the delay – Proviso to Section 10 F gives rider of "further period of not exceeding sixty days" has the effect of exclusion of Section 5 of Limitation Act – Appeal dismissed as barred by limitation: *Serious Fraud Investigation Office (SFIO) Vs. M/s. Bonanza Biotech Ltd., I.L.R. (2016) M.P. 1782*

– Section 10-F – See – Penal Code, 1860, Section 195: *Rajiv Lochan Soni Vs. Rakesh Soni, I.L.R. (2018) M.P. 1247*

– Section 22 – See – Companies Act, 2013, Section 16: *Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd., I.L.R. (2017) M.P. 2645*

– Section 433(e) – Debt – Meaning – Any pecuniary liability, whether payable presently or in future or whether ascertained or to be ascertained – Any liability which is claimed as due from any person: *Jonathan Allen Vs. Zoom Developers Pvt. Ltd., I.L.R. (2016) M.P. 3218 (FB)*

– Section 433(e) & 434 – Locus to file petition under – Unpaid salary/ wages & emoluments – Employee of the company has locus to file Company Petition as having been filed by a creditor of the company – Petition is maintainable: *Jonathan Allen Vs. Zoom Developers Pvt. Ltd., I.L.R. (2016) M.P. 3218 (FB)*

– Section 433(e) & 434 – Unpaid salary/wages of workman/employee is covered within the meaning of 'debts' under Section 433(e): *Jonathan Allen Vs. Zoom Developers Pvt. Ltd., I.L.R. (2016) M.P. 3218 (FB)*

– Section 434(1) – Winding up of Company – Presumption – Held – In order to raise presumption u/S 434(1) of the Act, as a company's inability to pay its debt, it is not sufficient to show merely that company has omitted to pay debts despite service of notice – It must be shown that company has omitted to pay debts without reasonable excuse – Machinery of winding up will not be allowed to be utilized merely as a means for realizing debt due from a company – Further held – As a thumb rule it cannot be said that merely because reply to statutory notice is not given, debt is either admitted or presumption can be drawn that respondent company is unable to pay the debt – Further held – In view of existence of arbitration clause in the present case, petitioner may avail the remedy of arbitration or any other remedy available under civil law – Company proceeding is not an appropriate remedy – Petition dismissed: *Tata International Ltd. Vs. M/s. Arihant Coals Sales (India) Pvt. Ltd., I.L.R. (2018) M.P. *55*

– Section 446 – Stay on winding up proceedings – Section 446 is not attracted in respect of issuance of notification under Madhya Pradesh Sahayata Upkram (Vishesh Upabandh) Adhiniyam, 1978: *Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd., I.L.R. (2016) M.P. 829*

– Section 531-A – Application – Scope & Maintainability – Held – Since offending transactions are void as against Official Liquidator, thus he has right to file application but for an order u/S 531-A, application by Official Liquidator may not be necessary and Company Court can take suo motu action under this provision to protect properties of company in liquidation: *Virendra Singh Bhandari Vs. M/s. Nandlal Bhandari & Sons P. Ltd. (In Liqn.), I.L.R. (2019) M.P. *73*

– Section 531-A – Examining the Transactions/Transfers – Requirements – Held – Company Court is required to see if transfer was made within one year before the presentation of petition, if answer is yes, Court has to examine if it was made in ordinary course of business of company, if answer is no, transfer is void and if answer is yes, Court has to examine if it was made in good faith and valuable consideration, if answer is no, transfer is void against the liquidator: *Virendra Singh Bhandari Vs. M/s. Nandlal Bhandari & Sons P. Ltd. (In Liqn.), I.L.R. (2019) M.P. *73*

– Section 531-A – Scrutiny of Transactions – Period – Held – Winding up petition filed on 16.08.1972 – Transactions within one year before the date i.e. on or after 16.08.1971 and upto 16.08.1972 will fall within the scope of scrutiny u/S 531-A: *Virendra Singh Bhandari Vs. M/s. Nandlal Bhandari & Sons P. Ltd. (In Liqn.), I.L.R. (2019) M.P. *73*

– Section 531-A – Void Transactions – Burden of Proof – Held – As per Section 531-A, a transaction can held to be void if it is found to be in violation of conditions mentioned therein – If an act is done bonafidely with honest intention, as per Section 531-A, it is done in good faith – Burden of proof lies on the person who alleges the transaction to be void: *Virendra Singh Bhandari Vs. M/s. Nandlal Bhandari & Sons P. Ltd. (In Liqn.), I.L.R. (2019) M.P. *73*

– Section 531-A – Voidable Transfers – Held – Since transfer made in violation of conditions mentioned in Section 531-A, are void against the liquidator, hence they are not in nullity in absolute but voidable at the option of Official Liquidator – Further, if Official Liquidator does not choose to disown such transactions, they will continue to be valid and operative – They are void as against Official Liquidator but they are valid inter parties: *Virendra Singh Bhandari Vs. M/s. Nandlal Bhandari & Sons P. Ltd. (In Liqn.), I.L.R. (2019) M.P. *73*

– Section 617 – See – Constitution – Article 12 & 226: *Seven Brothers (M/s.) Vs. Hinduja Leyland Finance Co., I.L.R. (2016) M.P. 2469*

COMPANIES ACT (18 OF 2013)

– Section 16 and Companies Act (1 of 1956), Section 22 – Rectification of Name of Company – Held – Central Government can form an opinion for purpose of rectification, *suo motu* or on an application filed by aggrieved person – Respondent rightly held that prior registration of a company is a relevant factor – No jurisdictional error, procedural impropriety or perversity in impugned order and hence upheld – Petition dismissed: *Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd., I.L.R. (2017) M.P. 2645*

– Sections 152, 154 & 158 and Companies (Appointment and Disqualification of Directors) Rules, 2014, Rule 11 – Director Identification Number (DIN) – Held – Petitioners has become disqualified u/S 164(2) of the Act of 2013 and therefore DIN status is showing as "disqualified by ROC u/S 164(2)" which has eclipsed their DIN which they cannot use till disqualification continues: *Suprabhat Chouksey Vs. Union of India, I.L.R. (2018) M.P. 1667*

– Section 164(2) & 167 – Disqualification for Appointment of Director – Failure to file Financial Statement/Annual Return – Consequences & Effect – Principle of Natural Justice – Held – As per provisions of Section 164(2) of Companies Act 2013, in default of filing financial statement or annual return for continuous period of 3 financial years, Director of Company is disqualified for reappointment as Director in defaulting company or appointment in any other Company for a period of five years and name of company is struck off from register of companies – Further held – In terms of proviso to Section 167, on incurring disqualification u/S 164(2), the

office of Director becomes vacant in all other companies except defaulting company – Further held – Petitioners had sufficient opportunity for a period of almost 5 years to cure the default which they have failed to avail – Petitions dismissed: *Suprabhat Chouksey Vs. Union of India, I.L.R. (2018) M.P. 1667*

– Section 430 – See – Interpretation of Statutes: *Manoj Shrivastava Vs. State of M.P., I.L.R. (2019) M.P. 207*

– Sections 439(1),(2), 436(1),(2), 441, 442, 435 & 445 – See – Penal Code, 1860, Sections 420, 467, 409 & 120-B: *Manoj Shrivastava Vs. State of M.P., I.L.R. (2019) M.P. 207*

COMPANIES (APPOINTMENT AND DISQUALIFICATION OF DIRECTORS) RULES, 2014

– Rule 11 – See – Companies Act, 2013, Sections 152, 154 & 158: *Suprabhat Chouksey Vs. Union of India, I.L.R. (2018) M.P. 1667*

COMPANY COURT RULES, 1959

– Rule 272 & 273 – Confirmation of Sale – Duty of Court – Held – It is bounden duty of Court to see that price fetched at auction is an adequate price even though, there is no suggestion of irregularity or fraud – If Court feels that price offered in auction is not adequate price, it can order for re-auction – In present case, appellant offered Rs. 2.79 crores more, thus fresh auction is inevitable: *Lakhani Footcare Pvt. Ltd. Vs. The Official Liquidator, I.L.R. (2020) M.P. 1733 (DB)*

– Rule 272 & 273 – Confirmation of Sale – E-Auction – Adequate Price – Company Judge confirmed sale in favour of R-2 – Held – As amount offered by R-2 was less that the initial reserve price and which was again less than amount offered by appellants, cannot be accepted as the difference is about 2.79 Crores – On mere technicalities, that appellant has not participated in process of tender, such an offer cannot be thrown in dustbin – Prayer of Official Liquidator for entire fresh e-auction is allowed – Company appeal allowed: *Lakhani Footcare Pvt. Ltd. Vs. The Official Liquidator, I.L.R. (2020) M.P. 1733 (DB)*

CONDUCT OF ELECTION RULES, 1961

– Rules 4 & 4A – See – Representation of the People Act, 1951, Sections 33A, 36 & 83(1)(a): *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Section 56D and Constitution – Article 329(b) – Voter Verifiable Paper Audit Trail (VVPAT) – Petitioner seeking directions to count all VVPAT slips alongwith counting of votes through EVM's in ongoing state assembly elections – Held – Once

the election process has commenced, writ petition cannot be entertained in view of Article 329(b) of Constitution – Candidate or his agent can make application before the Returning Officer under Rule 56D(2) of the Rules of 1961 – Petitioner could have submitted his suggestions before Election Commission of India – No directions can be issued – Petition dismissed: *Amitabh Gupta Vs. Election Commission of India, I.L.R. (2019) M.P. *14 (DB)*

– Rule 94-A, Form 25 – See – Representation of the People Act, 1951, Proviso to Section 83(1): *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

CONSTITUTION

– Article 12 & 226 – Maintainability of Petition – Tender Procedure – Judicial Review – Held – Though the Indian Red Cross Society do not fall within the definition of 'State' under Article 12 of the Constitution of India but it is amenable to writ jurisdiction of High Court in exercise of powers under Article 226 of the Constitution because such powers are wider enough and scope of judicial review is still open in case they have exercised the power arbitrarily and in discriminatory manner: *New Balaji Chemist (M/s.) Vs. Indian Red Cross Society (M.P. State Branch), I.L.R. (2018) M.P. 894*

– Article 12 & 226 and Companies Act (1 of 1956), Section 617 – 'Other Authority' – State – Respondent No. 1 company not performing public duty nor discharging any statutory function – Private Finance Company – Whether a Writ Petition is maintainable against a Private Company incorporated u/S 617 of the Companies Act – Held – No, as the Respondent No. 1 Company is a private company engaged in the business of finance cannot be classified as "Other Authority" to bring it in the fold of definition of 'State' under Article 12 of the Constitution to make it amenable to Writ Jurisdiction under Article 226 of the Constitution – Petition dismissed: *Seven Brothers (M/s.) Vs. Hinduja Leyland Finance Co., I.L.R. (2016) M.P. 2469*

SYNOPSIS : Article 14

1. Blacklisting/Principle of Natural Justice

– Article 14 – Principle of Natural Justice – Respondent was black listed

without issuing any show cause notice and without giving any opportunity of hearing – Black listing a contractor has serious civil and penal consequence, therefore before taking such a decision, it is necessary to give clear show cause notice and comply with the principle of natural justice – No error committed by the trial Court in staying the order of black listing – Appeal dismissed: *M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. Vs. Serco BPO Pvt. Ltd., I.L.R. (2018) M.P. 166*

2. Positive Equality

– Article 14 – Equality – Petitioner claimed that JDA/State has taken no coercive action against other parties who has been allotted land similarly – Held – It is settled law that Article 14 provides for positive equality and does not permit negative parity and not meant to perpetuate illegality – Further, petitioner failed to show that other parties got lease deed executed in respect of "Nazul Land": *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

3. Recovery

– Article 14 – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 34 – Held – Recovery procedure has been resorted to after arbitral award is passed and when it is not further objected within time prescribed u/S 34 of the Act of 1996 – Thus, procedure is not violative of Article 14 of Constitution – C.P.C. cannot be the only remedy, it is open to legislate recovery mechanism without interference of Civil Court: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

4. Subsidy

– Article 14 – Subsidy Scheme 1979 – Entitlement of petitioner's industry for grant of subsidy for the extended period in view of amendment made in the scheme in the year 2002 – Govt. subsidy was being paid to Small Scale Industry – Benefit of said scheme was extended to petitioner for a period of 3 years – Scheme was amended as interest subsidy was enhanced to 5% for a period of 7 years – Whether petitioner is entitled for benefit of amended scheme – Held – There was nothing in the amendment that the period already agreed for grant of subsidy under unamended scheme would automatically be enhanced in terms of amendment – Only because the petitioner's unit was already admitted to the benefit of the said scheme, the benefit of amendment cannot be extended to the petitioner – Petition is dismissed: *Sunpetpack Jabalpur Pvt. Ltd. Company Vs. State of M.P., I.L.R. (2016) M.P. 1271*

5. Tender Process

– Article 14 – Administrative Law – Tender – Rights of Bidder & Authority

– Power of Review – Held – Bidder participating in tender process have no other right except right of equality and fair treatment in evaluation of competitive bid – Apex Court concluded that authority has a right not to accept highest bid and even to prefer a tender other than highest bid when there exists good and sufficient reason – Authority can review and overturn its decision or refuse to accept highest bid if it is found that any irregularity is committed by officers/authority involved in tender proceeding: *Deepak Sharma Vs. Jabalpur Development Authority, I.L.R. (2020) M.P. 377*

– Article 14 – Notice Inviting Tender (NIT) was issued for providing Air Taxi Services – Condition 11(e) makes petitioner ineligible because his previous contract was terminated for not fulfilling his contractual obligation – Same is challenged alleging it to be arbitrary – Held – Pre-qualification condition neither violates Article 14 nor it is arbitrary and irrational – After analyzing the same on the anvil of justness, reasonableness and the object sought to be achieved prior defaulter has rightly been kept away from participating in the bidding process on the principal of once bitten twice shy – Petition dismissed: *Supreme Transport (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. *15 (DB)*

– Article 14 – Tender – Powers of State/Municipal Corporation – Held – State has right to refuse the lowest or any other tender keeping in view the principles of Article 14 – While accepting the tenders, if government tries to get the best person or best quotation, question of infringement of Article do not arise – Right to choose cannot be termed as arbitrary power – Principles of equity and natural justice do not operate in field of commercial transactions – High Court should not interfere with judgment of expert consultant: *Municipal Corporation, Ujjain Vs. BVG India Ltd., I.L.R. (2018) M.P. 1843 (SC)*

6. Miscellaneous

– Article 14 – See – Arms Act, 1959, Section 17(3)(a): *Gajendra Singh Vs. State of M.P., I.L.R. (2020) M.P. 406*

– Article 14 – See – Post Graduate Medical Education Regulations, 2000, Regulations 9(iv) & 9(vii): *Brijesh Yadav (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *124 (DB)*

• **– Article 14, 15, 25 & 26** – "Jalabhishek" in Jainism – Right of Religious Practice for Women – Held – In Terapanth sect temple, they allow women to enter and perform puja, however only men are allowed to perform "Jalabhishek" and to touch the idol as it is an idol of male Tirthankar and that too after taking bath and after wearing dhoti and dupatta – It is an essential religious practice in Terapanth sect and noway amounts to discrimination or in violation of the constitutional rights of women

devotees – Petition dismissed: *Aarsh Marg Seva Trust Vs. State of M.P., I.L.R. (2020) M.P. 74 (DB)*

– Article 14, 15, 25 & 26 – Religious Practice – Held – The saints (munees) of Digamber sect do not wear cloth and female devotee is not supposed to touch a male saint and a male devotee is also not permitted to touch a female saint – Thus, idols of male Tirthankars are not supposed to be touched by females – Such practice cannot be termed as discrimination: *Aarsh Marg Seva Trust Vs. State of M.P., I.L.R. (2020) M.P. 74 (DB)*

– Article 14, 15, 25 & 26 – Religious Practice – Judicial Review – Held – Courts have got no right to interfere with old age essential religious practices which is not opposed to public order, morality, health or any other fundamental rights – Courts are under obligation to follow religious text in cases of religious disputes and to follow the old practices prevalent in the religion so long as they do not violate constitutional rights of individual: *Aarsh Marg Seva Trust Vs. State of M.P., I.L.R. (2020) M.P. 74 (DB)*

– Article 14 & 16 – See – Lok Seva Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan Rules, M.P., 1998, Rule 4-B: *Ankit Baghel Vs. State of M.P., I.L.R. (2019) M.P. 390*

– Article 14, 19 & 21 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Rights of Major Girl – Held – Applicant is a major girl and she cannot be kept in Nari Niketan against her wish merely on the ground that he married a boy of another community and thus her life is in danger and there may also be social unrest – Applicant directed to be immediately released and she may be allowed to go to any place of her choice – It is the duty of police to provide full security to applicant: *Samiksha Jain (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *33*

– Article 14, 19, 25, 26, 38, 39, 39A, 48A, 51-A(h) & Part XII – Public Interest Litigation – Narmada Seva Yatra – Purpose – It was alleged that CM of the State is organizing the "Narmada Seva Yatra" and on pretext of cleaning and purifying holy river Narmada, he want to polarize Hindu votes and spending crores of rupees from State Exchequer and prayed to prohibit such yatra – Held – Move of the Government of M.P. is to clean holy river Narmada and have decided planting 5 crores plants on both sides of Narmada river for protection of environment of forest – Purpose of Yatra is to save water of river Narmada from pollution and to put awareness to villagers residing near the banks of river – Yatra is not to polarize Hindu vote in the name of holy river nor it is against the provisions of Article 14, 19, 25, 26, 38, 39, 39A, 48A and Part XII of Constitution – Cleaning of holy river Narmada is a secular activity of State and nothing to do with any religion – There is no prohibition

of participation of any person or class or any other leader of political party, all are free to participate – Present PIL filed without thorough study of factual situation and there are no specific pleadings to substantiate allegations – Court cannot issue a writ of prohibition to stop Narmada Seva Yatra – Petition dismissed: *Tapan Bhattacharya (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1649 (DB)*

– Article 14 & 19(1)(g) – See – Krishi Upaj Mandi (Allotment of Land and Structures Market Committee/Board) Rules, M.P., 2005, Rule 9(4) further repealed by M.P. Krishi Upaj Mandi (Allotment of Land and Structures) Rules, 2009: *Rakesh Jain Vs. State of M.P., I.L.R. (2019) M.P. 1041*

– Article 14, 19(1)G & 20 – NIT – Terms & Conditions – Held – Terms/ conditions imposed in NIT are reasonable keeping in view the specialized nature of work and to assure procurement of quality lifts to houses, which are being constructed for weaker section of society – Merely because conditions imposed are not suiting to petitioner, it cannot be said that respondents have acted in unfair manner in order to favour someone – No violation of Article 14, 19(1)G & 20 of Constitution: *Air Perfection (M/s) Vs. State of M.P., I.L.R. (2019) M.P. 1679 (DB)*

– Article 14 & 21 – See – Labour Laws (Amendment) and Miscellaneous Provisions Act, M.P. 2002: *State of M.P. Vs. M.P. Transport Workers Fedn., I.L.R. (2020) M.P. 1047 (SC)*

– Article 14, 39(b) & 226 – See – Vikas Pradhikarano Ki Sampatiyo Ka Prabandhan Tatha Vyayan Niyam, M.P., 2018, Rules 5, 6 & 7: *Indore Development Authority Vs. Sansar Publication Pvt. Ltd., I.L.R. (2019) M.P. 742 (DB)*

– Article 14, 39(b) & 226 – Writ of Mandamus – Grounds – Held – For issuing mandamus there has to be a legally enforceable right in favour of a person under the statute and public authority is under an obligation to follow the statute and to perform – Before commanding public authority, it has to be established that public authority or public functionary is denying the legally enforceable right to such person – In present case, authorities are being compelled to perform a negative duty by directing allotment of commercial plot of about 200 Crores situated in different locality in the year 2019 that to by charging rates of 1992, de hors the allotment rules: *Indore Development Authority Vs. Sansar Publication Pvt. Ltd., I.L.R. (2019) M.P. 742 (DB)*

– Article 14 & 226 – Government Contract – Notice Inviting Tender – Conditions – Scope of Judicial Review – Held – Scope is confined as to whether there was any illegality, irrationality or procedural impropriety committed by the decision making authorities – Tenders floated by government are amenable to judicial review only to prevent arbitrariness and favouritism and to protect the financial interest of

the State and public interest – Court cannot check the soundness of the decision made by competent authorities – Duty of the Court is only to examine whether decision making process was fair, reasonable, transparent and bonafide with no perceptible injury to public interest – In the present case, decision has been taken by committee of experts after due deliberations and this court in exercise of power under Article 226 of Constitution cannot sit in appeal over the decisions taken by the committee of experts – From perusal of record, it is evident that impugned conditions in Notice Inviting Tender incorporated by the committee after detailed deliberations and application of mind – No interference called for: *Holoflex Ltd. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 573 (DB)*

– Article 14 & 226 – Government Contract – Notice Inviting Tender – Grievance and Remedy – Power/Authority vested in the Excise Commissioner regarding Notice Inviting Tender is directory in nature – He has the authority to lay down terms and condition thereon – Liberty granted to petitioners to approach Excise Commissioner for their grievance – Petitions disposed: *Holoflex Ltd. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 573 (DB)*

– Article 14 & 226 – Jurisdiction and Scope – Alternate Remedy – Held – Despite availability of alternative statutory remedy, writ petition can be entertained if order under challenge hits Article 14 – Availability of alternative remedy of appeal under the CCA Rules is not a bar to exercise jurisdiction by this Court in a case of this nature: *Nahid Jahan (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2947*

– Article 16(2) – Public Employment – Equality of Opportunity – Held – After written examination, department exempted the requirement of holding viva-voce/interview as prescribed in statutory rules/ advertisement – State has ample power to relax the recruitment rules – Action of State Government cannot be said to prejudice any candidate as the change/relaxation in norms/rules does not adversely affect the right to be considered in public employment – It is not a case where participation in interview is waived for few and not for others thus no ground of discrimination established – No interference called for – Petition dismissed: *Ranjana Kushwaha (Dr.) Vs. State of M.P., I.L.R. (2019) M.P. *10*

– Article 16(4) – Reservation- Singular cadre post – Clubbing of posts – Held – Singular post of different disciplines cannot be clubbed together unless it is shown that such posts are interchangeable – It is further held that such posts are isolated posts in different disciplines and they do not form a singular cadre: *Deepti Chaurasia (Dr.) Vs. Union of India, I.L.R. (2017) M.P. 2118*

– Article 16(4), 16(4-A), 16(4-B), 46, 330, 335, 341 & 342 – Promotion – Reservation for Backward Class – Held – "Nagaraj" case has wisely left the test

for determining adequacy of representation in promotional post to States for simple reason that as the post gets higher, it may be necessary to reduce the number of Scheduled Caste and Scheduled Tribes in promotional post, as one goes upwards – This is for simple reason that efficiency of administration has to be looked at every time promotions are made – Article 16(4) has been couched in language which would leave it to States to determine adequate representation depending upon the promotional post that is in question – Thus, the conclusion in "Nagaraj" case that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and Scheduled Tribes, being contrary to nine-judge bench in Indra Sawhney (1) is held to be invalid to this extent – Reference answered accordingly: *Jarnail Singh Vs. Lachhmi Narain Gupta, I.L.R. (2019) M.P. 261 (SC)*

– Article 19 – Right to carry on business – Company not being a citizen, has no fundamental right under Article 19 of Constitution of India: *B L A Power Pvt. Ltd. Vs. Union of India, I.L.R. (2016) M.P. 129 (DB)*

– Article 19(1)(g) – See – Forest Act, 1927, Sections 52(3), 52(5) & 55: *Santra Bai Lodha (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 1269*

– Article 19(1)(g), 19(6) & 21 – See – Foreign Trade (Development & Regulation) Act, 1992, Section 3: *Akshay N. Patel (Mr.) Vs. Reserve Bank of India, I.L.R. (2020) M.P. 2768 (DB)*

– Article 20 & 20(3) – See – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d) & 13(2): *Buddha Sen Kumhar Vs. State of M.P., I.L.R. (2017) M.P. *132 (DB)*

– Article 20(2) – See – Penal Code, 1860, Sections 337, 279 & 304-A: *Nadimuddin Vs. State of M.P., I.L.R. (2016) M.P. 316*

– Article 20(3) – See – Evidence Act, 1872, Section 27: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

– Article 21 – Capital Punishment – Constitutional Validity – Held – Death penalty imposed after trial in accordance with established procedure of law, is not unconstitutional as per Article 21: *Anand Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. 1470 (DB)*

– Article 21 – Right to Fair Trial – Held – Fair Trial is the main object of Criminal Law – Denial of Fair Trial is as much injustice to the accused and the justice should not only be done, it should be seen to have done: *Shivshankar Mandil Vs. Shri G.S. Lamba, I.L.R. (2017) M.P. 231*

– **Article 21** – Right to Life and Personal Liberty – Held – Even otherwise, Article 21 of Constitution wherein right to life and personal liberty are secured, no person can be debarred of such liberty at the instance of false complaint: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 2(h): *Utkarsh Saxena Vs. State of M.P., I.L.R. (2019) M.P. 653*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 437(6): *Pramod Kumar Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1329*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 438: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 482: *Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P., I.L.R. (2017) M.P. 2881*

– **Article 21** – See – Medical Termination of Pregnancy Act, 1971, Section 3 & 5: *Raisa Bi Vs. State of M.P., I.L.R. (2019) M.P. 1415*

– **Article 21** – See – National Security Act, 1980, Section 3(2) & (3): *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– **Article 21** and Universal Declaration of Human Rights, 1948, Article 12 – Right to Privacy – Held – Act of petitioner No. 2, even assuming that his father is no more and he has kept the human remains/body in his residential premises, by itself does not become an illegality warranting intrusive action by State – State cannot curtail actions and thoughts of individual nor can intervene and disturb the right of privacy as long as such action is not violative of any existing law, being an offence or illegality – Further, there is no complaint before any authorities by any neighbours – Impugned direction quashed – Petition allowed: *Shashimani Mishra Vs. State of M.P., I.L.R. (2019) M.P. 1397*

– **Article 21, 22(2) & 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 57 & 167 – Habeas Corpus – Illegal Detention – Detenue formally arrested in jail on 04.03.2020, petition of *habeas corpus* filed on 11.05.2020 and State was heard on 13.05.2020 – After notice taken by State, detenue was produced before Magistrate on 15.05.2020 – Held – Date on which petition was filed and date on which hearing took place, detention of detenue was unlawful and was violative of Article 21 & 22(2) of Constitution: *Chanda Ajmera Vs. State of M.P., I.L.R. (2020) M.P. 1332 (DB)*

– Article 21, 22(2) & 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 57 & 167 – Habeas Corpus – Illegal Detention – Held – Husband of petitioner was in jail and was formally arrested for a subsequent crime but was not produced before Court within 24 hrs. of such formal arrest – No reasonable explanation by State – In respect of such subsequent offence, detention was illegal as it was violative of Article 21 & 22(2) of Constitution – Detenue directed to be released – Petition allowed: *Chanda Ajmera Vs. State of M.P., I.L.R. (2020) M.P. 1332 (DB)*

– Article 21, 22(2) & 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 57 & 167 – Illegal Detention – Practice & Procedure – Held – Even if a person has been formally arrested in jail, he has to be produced before the nearest Magistrate within 24 hrs, physically or through video conferencing – After formal arrest, Police Officer shall make an application before Jurisdictional Magistrate for issuance of PT Warrant without delay: *Chanda Ajmera Vs. State of M.P., I.L.R. (2020) M.P. 1332 (DB)*

– Article 21 & 39-A – See – Penal Code, 1860, Sections 302, 363, 366, 376(2)(f) & 377: *Anokhilal Vs. State of M.P., I.L.R. (2020) M.P. 1011 (SC)*

– Article 21 & 226 – Public Interest Litigation – Unmanned Railway Crossing – Construction of Road Over/Under Bridge & Level Crossing – Held – As matter involves precious lives of citizens including school going children as well as their properties, merely on ground of technicality and for administrative lethargy, this fundamental right of life as guaranteed under Article 21 cannot be taken away – State and its functionaries cannot take refuge of shortage/constraint of funds to justify their inaction – Respondents directed to take immediate steps for construction – For delay in construction, Union of India and State Government is equally responsible, cost of Rs. 10,000 each imposed – Petition allowed: *Mukesh Yadav Vs. Union of India, I.L.R. (2020) M.P. 320 (DB)*

– Article 21 & 226 – Right to Speedy Trial – Held – If inordinate delay takes place in conclusion of trial for no apparent fault of accused, his right under Article 21 kicks in and his petition for quashing the retrial ordered on account of first trial ending in discharge due to invalid sanction, may effectively be sustained on grounds of violation of right to speedy trial: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Article 21(A), 45 & 51(A) – See – Right to Children of Free and Compulsory Education Act, 2009, Section 6: *Aided Primary School, Rajgarh Vs. State of M.P., I.L.R. (2016) M.P. 2159*

– Article 22(4) – See – National Security Act, 1980, Section 3(3) proviso: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

– Article 25 & 26 – Mahakaleshwar Temple – Erosion of Lingam – Preservation – Scientific Analysis – Court made committee of experts from Geological Survey of India and Archaeological Survey of India to study, survey, examine and analyse the Lingam and the materials used for worshipping the deity, such as water, milk, desi ghee, curd, honey, gulal, bhasm, kumkum, sugar products, oil lamps, dhops, incense sticks etc, regarding its purity and chemical characteristics and to recommend the measures/ steps/precautions to be taken to ensure that deterioration/ shrinkage of Lingam stops: *Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain, M.P., I.L.R. (2018) M.P. 2573 (SC)*

– Article 25, 26, 49 & 51A – Mahakaleshwar Temple – Erosion of Lingam – Preservation – Conservation of Heritage – Constitutional and Fundamental Duty – Held – There is a constitutional obligation to preserve religious practices of all religion and culture – Mahakaleshwar Jyotirlingam has so much importance for spiritual and other gains, it is constitutional duty to protect it as envisaged in Articles 25, 26 & 49 of Constitution, at the same time it is a fundamental duty under Article 51A of Constitution to promote harmony and spirit of common brotherhood and to value and preserve the rich heritage of our composite culture – State is duty bound to take necessary steps and spend amount to preserve the deity: *Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain, M.P., I.L.R. (2018) M.P. 2573 (SC)*

– Article 32, 51-A, 136 & 226 – PIL – Locus – Verifying the Bonafides – Requirements – Discussed and enumerated: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

– Article 32, 51-A, 136 & 226 – PIL – Locus & Scope – Held – Under Article 32, 51-A and 136, Rule of *locus standi* is not a rigid rule – Scope of PIL has been widely enlarged by Apex Court by relaxing and liberalising the rule of locus by entertaining letters or petitions sent by any person or association, complaining violation of fundamental rights and also by entertaining writ petitions filed under Article 32 by public spirited and policy oriented activists or by any organisation: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

– Article 39A & 226 – PIL – Prompt Social Justice – Held – Concept of "Public Interest Litigation" is in consonance with the principles enshrined in Article 39A of the Constitution to protect and deliver prompt social justice: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

– Article 51-A – Fundamental Rights and Duties – Held – Constitution guaranteed that every person has a fundamental right to protest against any atrocity regardless of its place, caste or religion but these rights are saddled with fundamental duties as enshrined under Article 51-A – Persons who in garb of such public procession

shows total disregard to fundamental duties must be punished without any leniency after a fair and expeditious trial: *Jaheeruddin Vs. State of M.P., I.L.R. (2018) M.P. 2056*

– Article 136 – Deficient Stamp Duty – Penalty – Mode of Payment – Held – Appellant, being subsequent purchaser of property in question is liable to deposit penalty but he deposited the same through 6 post date cheques – Held – Facility to deposit penalty through post dated cheques cannot be approved: *MSD Real Estate LLP (M/s.) Vs. The Collector of Stamps, I.L.R. (2020) M.P. 2509 (SC)*

– Article 136 – Deficient Stamp Duty – Penalty & Denial of Building Permission – Held – Direction of High Court to reconsider application for building permission after deposit of deficit stamp duty and penalty, amply protects the rights of appellant – In view of deposit of penalty by appellant, appellant is free to apply for building permission, to be considered by Municipal Corporation – Appeal disposed: *MSD Real Estate LLP (M/s.) Vs. The Collector of Stamps, I.L.R. (2020) M.P. 2509 (SC)*

– Article 136 – Discretionary Jurisdiction – Held – In exercise of discretionary jurisdiction under Article 136, this Court may not interfere with an order of acquittal, reversing a conviction, yet if it finds that High Court has completely erred in appreciation of evidence, has applied wrong principles to negate common intention and has based its conclusions on speculative reasoning beyond the defence of accused himself, justice will demand that acquittal is reversed: *Rajkishore Purohit Vs. State of M.P., I.L.R. (2017) M.P. 2299 (SC)*

– Article 136 – Jurisdiction – Held – This Court while exercising jurisdiction under Article 136 of Constitution, generally does not interfere with the impugned judgment unless there is a glaring mistake committed by Court below or there has been an omission to consider vital piece of evidence: *State of M.P. Vs. Nande @ Nandkishore Singh, I.L.R. (2018) M.P. 617 (SC)*

– Article 136 – Scope & Jurisdiction – Held – If this Court is satisfied that prosecution failed to establish prima facie case, evidence led was wholly insufficient and there has been gross mis-appreciation of evidence by Courts below bordering on perversity, it shall not be inhibited in protecting the liberty of individual: *Gangadhar @ Gangaram Vs. State of M.P., I.L.R. (2020) M.P. 1989 (SC)*

– Article 136 – See – Specific Relief Act, 1963, Sections 16(c), 20, 21, 22 & 23: *Kamal Kumar Vs. Premlata Joshi, I.L.R. (2019) M.P. 707 (SC)*

– Article 136 & 226/227 – Scope – Practice and Procedure – Held – Orders and notices issued by Municipal Corporation and State Authorities are all

subsequent actions which were not the subject matter of writ petition before High Court and thus cannot be considered in present appeal: *MSD Real Estate LLP (M/s.) Vs. The Collector of Stamps, I.L.R. (2020) M.P. 2509 (SC)*

– Article 141 and Prevention of Corruption Act (49 of 1988), Section 19(4), Explanation (a) – Binding Precedent & *Obiter Dicta* – Held – When Apex Court interprets a statutory provision though not necessary for decision of the core issue involved in a case before it, same being an *obiter dicta* of Supreme Court would still be a binding precedent under Article 141 of Constitution on all subordinate Courts – Para 48 of judgment of *Prakash Singh Badal's* case is not a binding precedent but an *obiter dicta*, as it was not essential for decision on the core issue and as the *obiter dicta* does not consider provisions of Section 19(4) and explanation (a) thereto, the *obiter* is not binding on this Court: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Article 142 – Madhya Pradesh Professional Examination Board (Vyapam) – Pre-Medical Test for Admission in M.B.B.S. Course – Cancellation of Results – Unfair Means – Board cancelled the results of the appellants for using unfair means during Pre-Medical Test conducted in the 2008 to 2012 – Appellants filed writ petitions before the High Court whereby the same were dismissed – Challenge to – Held – None of the appellants would have been admitted, as their merit position in the examination was not because of their own efforts but was based on extraneous assistance – The deception and deceit adopted by the appellants cannot be termed as simple affair which can be overlooked, in fact it was the outcome of well orchestrated strategy based on an established fraud and manipulation – It is not possible to accept that, involvement of appellants was not serious in fact it was indeed the most grave and extreme – Earlier also this Court has held that such admission of the candidates to M.B.B.S. course was vitiated and this view of the court has attained finality – Appellants herein are the beneficiaries of such vitiated process – Nothing obtained by fraud can be sustained, as fraud unravels everything – Jurisdiction under Article 142 of the Constitution cannot be invoked in such cases which would not serve the "larger interest of justice", on the contrary, would cause manifest injustice – Scope and jurisdiction of Article 142 of Constitution discussed – Order passed by Vyapam upheld – Appeals dismissed: *Nidhi Kaim Vs. State of M.P., I.L.R. (2017) M.P. 1547 (SC)*

– Article 142 – Mahakaleshwar Temple – Erosion of Lingam – Preservation – Directions issued to temple Committee in respect of the following :-

(i) To ensure purity of pooja materials and to prevent further erosion of Lingam, plan be prepared regarding entire offering materials on lingam to be manufactured and provided by the temple itself.

(ii) For application of *bhang* (cannabis) it is for the temple committee to decide with help of scriptures and experts as to in which manner and in what quantity it should be applied and for how much time and in what rituals.

(iii) Concrete plan be made for improvement and modernization of *Gaushalas* and kitchen so that temple becomes self sufficient to provide all pooja material based on milk products.

(iv) Let temple committee make an endeavour alongwith other stakeholders to prepare/manufacture the offering material in purest of form so that only pure and unadulterated materials are offered in pooja on Lingam.

Appeal disposed of: *Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain, M.P., I.L.R. (2018) M.P. 2573 (SC)*

– Article 142 – Mahakaleshwar Temple – Erosion of Lingam – Preservation – Jurisdiction of Court – Held – It is not within jurisdiction of this Court to dictate or to prescribe or restrain the religious practices and Pujas to be performed in temple but at the same time it has to be ensured that no damage is caused to the Lingam due to use of adulterated material – It is further made clear that this Court have not interfered with religious ceremonies to be performed in the temple: *Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain, M.P., I.L.R. (2018) M.P. 2573 (SC)*

– Article 142 – Mahakaleshwar Temple – Erosion of Shivalingam – Preservation – On basis of report submitted by Expert Committee, following directions issued :-

(i) Any devotee/visitor should do no rubbing of Shivalingam. Rubbing not to be done by anyone except during traditional Puja and Archana performed on behalf of temple. If done by any devotee, accompanying Poojari/Purohit shall be responsible. Committee to provide water from Koti Thirth Kund, filtered and purified to maintain pH value.

(ii). pH value of Bhasma during Bhasma Aarti be improved.

(iii). Weight of Mund Mala and Serpakarnahas should be reduced to preserve from mechanical abrasion. Committee to find out whether it is necessary to use Metal Mund Mala or there can be a way out to use Mund Mala and Serpakarnahas without touching the Shivalingam.

(iv). Rubbing of curd, ghee, honey by devotees is also a cause of erosion. No panchamrita to be poured by any devotee. Only pouring a limited

quantity of pure milk is allowed whereas all pure materials can be used during the traditional puja performed on behalf of temple.

(v). Entire proceedings of Puja and Archana in Garbh Griha to video recorded 24 hrs. and be preserved for atleast 6 months.

(vi). Myriad religious rituals and ceremonies to be performed regularly but by the expert/customary Poojaris and Purohits.

(vii). Necessary repair and maintenance be carried out urgently. Collector and S.P. Ujjain directed to remove encroachment within 500 mtrs of the temple premises.

(viii). Comprehensive plan be prepared and implemented for preservation and maintenance of Chandranageshwar Temple.

(ix). CBRI Roorkee and Ujjain Smart City Ltd were issued direction to submit report regarding structural stability of the temple.

(x). Modern additions shall be removed. Original work in the temple to be restored: *Sarika Vs. Administrator, Mahakaleshwar Mandir Committee, Ujjain (M.P.), I.L.R. (2020) M.P. 2419 (SC)*

– Article 142 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37: *Jagdish Vs. State of M.P., I.L.R. (2017) M.P. 684*

– Article 142 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(xi): *State of M.P. Vs. Vikram Das, I.L.R. (2019) M.P. 1195 (SC)*

– Article 142 – See – Service Law: *State of M.P. Vs. Amit Shrivas, I.L.R. (2020) M.P. 2516 (SC)*

– Article 145 & 226 – See – Advocates Act, 1961, Sections 7, 34, 48a & 49: *Banwari Lal Yadav Vs. High Court Bar Association, I.L.R. (2016) M.P. 1964 (DB)*

– Article 166(i), 166(2), 166(3) & 226, Rules of Business of the Executive, Government of M.P., Rule 13 and M.P. Government Business (Allocation) Rules – Sanction to Alienate Government Property – Procedure – Held – The decision to accord sanction to alienate government property is a policy decision to be taken by government and same cannot be replaced by a D.O. letter of an officer of State – As per Business Allocation Rules of State in respect of sale of property, letter has to be issued in name of Governor of State – Proposals involving alienation by way of sale, grant of lease of government property exceeding 10 lacs in value, is to be placed before Council of ministers – No such procedure followed – Chief Secretary is nobody

to write a letter in respect of property of State: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

– Article 213(1), 254, 304(b), Jaiv Anaashya Apashistha (Niyantran) Adhiniyam, M.P. (20 of 2004), Section 3, Jaiv Anaashya Apashistha (Niyantran) Sanshodhan Adhiniyam, M.P. (26 of 2017) and Plastic Waste Management Rules, 2016, Rule 4(c) & (d) – Prohibition on Plastic Bags – Contradictions with Central Rules – Public Interest – Held – Central Rules of 2016 permits carry bags made of virgin and recycled plastics of not less than 50 microns in thickness but the State Act has completely prohibited the manufacture, sale, transportation and use of plastic bags – State Act is not in contravention of the Central Rules but is a step ahead which puts more stringent conditions than what is permissible in Central Rules to eliminate the use of plastic bags which has a larger public interest involved – Legislative Competence – Held – Since State Act was affecting the Central Rules, sanction was granted by President as was required in terms of proviso to Article 304(b) and Article 213(1) of Constitution – Such sanction was the constitutional requirement and having granted so, State Act cannot be disputed on the ground that it contravenes any provisions of Central Rules – State Act cannot be said to be beyond the legislative competence of State Legislature – Petitions dismissed: *Popular Plastic (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. *93 (DB)*

– Article 215 – See – Contempt of Courts Act, 1971, Section 10 & 12: *Satish Shrivastava Vs. M.K. Varshney, I.L.R. (2017) M.P. *27*

– Article 225 – See – Representation of the People Act, 1951, Section 80 A: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

SYNOPSIS: Article 226

1. Admission/Appointment/Recruitment/Selection/ Examination

– Article 226 – Admission – Entrance examination by APDMC – Common Entrance Test – For free and fair conduct of examination, scanning of OMR sheets was directed by order dt. 09.07.2015 – However, subsequently by order dt. 28.07.2015, on the application of Association of Private Dental & Medical Colleges of Madhya Pradesh, certain security measures were suggested – Terms of order dated 28.07.2015 are modified and additional parameters like use of one computer, provision for auto generated real time alert, directions with regard to second attempt after the question is already attempted etc. issued: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 464 (DB)*

– Article 226 – Admission and Compensation – Petition against cancellation of admission despite online counselling and deposit of the required fees, on the ground that Institute is not approved from the University for the course of M.Tech (Civil Structural Engineering) – Held – Prospectus of the Institute shows that course of M.Tech (Civil Structural Engineering) is an approved course – Relief of admission cannot be granted on account of efflux of time – Amount deposited by the petitioners be refunded along with interest @ 6% p.a. till it is refunded – S.P. Gwalior directed to

take action against the Institute and its Vice President on the complaint already filed by the petitioners – Compensation – Further held, since present Institute is a private educational institution not receiving any grant-in-aid from the State Government, compensation against it cannot be granted in a petition under Article 226 as such remedy cannot be treated as public law remedy – Cost of Petition Rs. 5000 be deposited by the Institute – Petition disposed: *Pratush Kumar Sharma Vs. State of M.P., I.L.R. (2017) M.P. *38 (DB)*

– Article 226 – Appointment – Judicial Review – Scope and Jurisdiction – Held – It is purely a discretion of respondent/commission to consider the candidature of candidate on basis of qualification prescribed under advertisement as well as under Recruitment Rules and it is beyond the scope of judicial review under Article 226 of Constitution: *Priti Soni Vs. State of M.P., I.L.R. (2019) M.P. 818*

– Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 2(u) & 24 – Appointment of Government Advocate – Eligibility Criteria – Held – Appointment is purely prerogative of State Government and Court cannot interfere into it because such appointment is purely a professional engagement – Petitioner has no legally enforceable right to claim appointment as a matter of right – State Guidelines are merely executive instructions and not statutory in character – Petition dismissed: *Pawan Kumar Joshi Vs. State of M.P., I.L.R. (2020) M.P. 352*

– Article 226 – Cancellation of Appointment – Opportunity of Hearing – Principle of Natural Justice – Held – Principle of natural justice are not required to be followed where large number of candidates have been selected on basis of forged and tampered mark sheet – Admittedly, original interview marks of candidates are not available, therefore tainted and untainted candidates cannot be segregated – Decision of the Samiti to re-advertise the post is not justified as it will put the earlier candidates to a disadvantageous position – Samiti directed to conduct interview of all candidates and on the basis of marks assigned, make appointment – Petition disposed of: *Raghvendra Singh Yadav Vs. Union of India, I.L.R. (2017) M.P. 2421 (DB)*

– Article 226 – Petitioner – Appointed & posted as Process Server – Plea that he is not expected to discharge work of Water Server – Tenability – Held – Such a plea is not tenable for want of specific pleading in writ petition or during enquiry or before Appellate Authority: *Raj Kumar Vishwakarma Vs. State of M.P., I.L.R. (2016) M.P. 115 (DB)*

– Article 226 – Entrance Examination by APDMC – Scanning of OMR sheets after examination – Complete procedure – Explained: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 453 (DB)*

– Article 226 – Examination – Markings – Maintainability of Petition – Written examination was conducted by the Public Service Commission (PSC) for certain vacancies/ post – It was submitted by petitioner and was duly admitted by respondent that answer to one particular question was not evaluated and marks have not been granted – It was also submitted that a candidate who obtained 1199 marks has been selected and petitioner, because of such default, secured 1197 marks and was kept in the supplementary list – On the next date of hearing, subject expert was called for evaluation of that particular answer whereby Petitioner was granted 7 marks out of 15 – Respondent directed to include 7 marks in the result of the petitioner and she be given appropriate placement in the merit list and shall be considered accordingly for the appropriate post – Further held – Under Article 14 and 16 of the Constitution, right of consideration is a fundamental right of a candidate which includes a right of fair consideration, which in the present case was infringed because of improper valuation by the respondent – Valuation must be done meticulously – Court should not generally direct revaluation in a routine manner but in cases where negligence manifest on the face of the record, directions can be issued – Petition allowed: *Roma Sonkar Vs. State of M.P., I.L.R. (2017) M.P. *71*

– Article 226 – Examination – Re-Evaluation – In the answer sheet of petitioner, one answer was not evaluated – Held – It is apparent that respondents have committed a grave, admitted and material error in not giving marks to the said question – In a case of this nature, direction for re-checking or re-evaluation can be granted – Respondents directed to recheck the said question and grant appropriate marks – Petition allowed: *Rohit Jain Vs. M.P.P.S.C., I.L.R. (2018) M.P. 2431*

– Article 226 – Medical Entrance Examination – Suggestions on certain security measures invited from Principal and Monitoring agencies i.e. APDMC and AFRC: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 457 (DB)*

– Article 226 – Medical Entrance Examination by APDMC – Admission beyond 30th September – Regulation on Graduate Medical Education 1997 postulates that no admission of student in respect of any academic session beyond 30th September should be permitted – Prohibition is against the Authorities – It is open to Writ Court to issue directions to Authorities which must bind the Authorities to permit admission and registration of student even beyond 30th September, in case the Court records its satisfaction and just reasons therefor: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 499 (DB)*

– Article 226 – Permission to grant admission beyond 30th September – On apprehension expressed in PIL, Court directed to immediately scan and digitize the answer papers – Written Examination could not be conducted and it stood postponed – Subsequently, online examination was announced on 20-9-2015 however, due to

several technical faults which occurred during examination period, the examination was to be abandoned – Subsequently, the examination was conducted on 8th October, 2015 – Situation was not created by Institutions intentionally nor the students who would be taking admission are responsible for the same – Date of admission extended till 14-10-2015 – Union of India, MCI and Dental Medical Council and Universities directed to recognize the admission process for academic year 2015-16 completed by 14-10-2015 and to register the students so admitted and allow them to pursue their medical course in respective colleges treating them having been admitted within prescribed period: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 499 (DB)*

– Article 226 – Petition for re-calculation of marks in English and re-evaluation of the answer script of Hindi and to issue revised mark-sheet – Held – Since the valuers have not been alert and vigilant while evaluating the answer script of the petitioner he was awarded less marks – Valuers should not forget that they are deciding the fate and future of younger generation – Petitioner is entitled for 10 more marks in English and 5 more marks in Hindi – Board is directed to pay compensation of Rs. 50,000/- to the petitioner – Revised mark-sheet be issued within a period of 2 weeks: *Prakhar Kumar Mishra Vs. M.P. Board of Secondary Education, I.L.R. (2016) M.P. 1354*

– Article 226 – Prescribed Rules for Process of Appointment – Jurisdiction – Held – By judicial order, the Central Administrative Tribunal cannot issues direction to conduct interview in a manner otherwise than prescribed by Recruitment Rules – Direction of Tribunal to conduct interview in a particular manner is set aside: *Raghvendra Singh Yadav Vs. Union of India, I.L.R. (2017) M.P. 2421 (DB)*

– Article 226 – Recruitment Examination – Answer Key – Judicial Review – Held – In exercise of judicial review, Court should not refer the matter to Court appointed expert as Courts have a very limited role particularly when no malafides have been alleged against the experts constituted to finalize answer key – It would normally be prudent, wholesome and safe for Courts to leave the decisions to the academicians and experts: *Nitin Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2314 (FB)*

– Article 226 – Selection – Counselling – Selection of Junior Supply Officer (JSO) & Weights and Measures Inspectors (WMI) – VYAPAM – Held – Simultaneous counseling cannot be conducted for both the post by respondents though the select list and verification of documents were done commonly, because both the post are different and the department is also different – Procedure adopted by respondents in selecting candidates is just and proper – Petition dismissed: *Poornendra Prakash Shukla Vs. State of M.P., I.L.R. (2017) M.P. *143*

– Article 226 – Selection – Vacant Post – Circular of State Government – Applicability – Held – As per the circular dated 07.03.2012, if during validity of wait list, any candidate does not join on the post or died or resigned, then the said post will be declared as fallen vacant and same shall not be filled up from candidate of waiting list – Further, Circular does not refer that it would be applicable only in case of Class II employees: *Poornendra Prakash Shukla Vs. State of M.P., I.L.R. (2017) M.P. *143*

– Article 226 – Writ of "Quo Warranto" – Recruitment – Adverse Inference – Held – Without any authority, Selection Committee waived the requirement of 10 years PG experience and also rejected candidature of 5 candidates – Minutes of meetings were fraudulently prepared – An adverse inference would be drawn against respondents regarding appointment of R-8, who was not having minimum qualification and has given wrong information in his CV – Record also reveals that no such post was in existence for which R-8 was appointed – Appointment liable to be and is quashed – Petition allowed: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Writ of "Quo Warranto" – Recruitment – Practice & Procedure – It is well established principle of law that regarding recruitment, required qualifications cannot be changed in mid of recruitment process – If some changes/ relaxation was required, then fresh advertisement should have been issued, so that other desirous candidates could have applied – Since minimum qualification was relaxed in mid way, that too without approval of Board of Governors, entire selection process gets vitiated: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Writ of "Quo Warranto" – Scope & Jurisdiction – Recruitment – "Eligibility" & "Suitability" of Candidate – Held – For writ of Quo Warranto, it is not required that petitioner should be one of the candidate to recruitment process – Writ can be issued, if public appointment is contrary to statutory provisions – Court can consider the "Eligibility" of a candidate but not the "Suitability" – Sometimes, malafides may encroach upon the question of "Suitability", thus the manner in which appointment was made and the procedure adopted can also be considered: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Writ of "Quo Warranto" – Ground – Maintainability – Held – Petition cannot be thrown overboard only on technical ground that initial order of appointment was not challenged – In writ of Quo Warranto, challenge to appointment on public post was made on ground of eligibility of candidate – Question of eligibility is important: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

2. Allotment/Sale of Plot & Lease Deed

– Article 226 – Allotment of Plot – Cancellation – Grounds – Held – Plot was allotted to petitioner's husband in the year 1988 agreement was executed, entire consideration amount was deposited and finally possession was delivered – Allotment order was cancelled by the authority on the ground that party failed to pay the revised rates of plots as per the resolution passed in the year 2003 – Held – There was no rational justification as to why petitioner's husband was called upon to pay the revised premium and lease rent – Allotment of plot with concluded contract cannot be reopened after a gap of 18 years under the pretext of revised policy – Authority is stopped from raising such arbitrary demand from petitioner – Once petitioner's husband alongwith other allottees irrespective of the size of their shops, were allotted plots of different dimensions and fixed the premium and lease rent and thereafter singling out the petitioner's husband to revised premium and lease rent, is totally arbitrary and contrary to the concept of Wednesbury principles of reasonableness – Action of the authority shall not be discriminatory and must be in conformity with the principles of Article 14 of Constitution – Impugned communication and subsequent actions of the authority is hereby quashed – Petition allowed: *Manorama Solanki Vs. Indore Development Authority, I.L.R. (2018) M.P. 489*

– Article 226 – Allotment of Plot – Legitimate Expectation – Petitioner was allotted plot in Sector E whereby he paid the entire premium amount but possession was not given by respondents because of certain encroachments and litigation – Board passed a resolution to allot plot to such people in Sector F for which consent was not given by petitioner – Fresh NIT issued by respondents to sell plots in Sector 'E' – Challenge to – Held – As allotment was done in 1994, petitioner who is waiting for possession since last 20 years, is having legitimate expectation for taking possession of plot from respondents, either in Sector 'E' or 'F' – Respondents directed to either handover one plot from Sector 'E' which are under fresh auction in impugned NIT or allot the Plot No. T-1 or T-2, as being bigger in size, petitioner is ready to pay the difference amount for extra area as per collector guideline – Petition partly allowed: *Sunil Dangi Vs. Indore Development Authority, I.L.R. (2019) M.P. 367*

– Article 226 – Allotment of Plot – Tender – Rejection of Highest Bid – Held – Highest bid of petitioner rejected without assigning any sufficient reasons merely on a complaint filed by a member of Board, who herself was one of the member of Allotment Committee – Enquiry report, favouring petitioner, was discarded by respondent and entire tender proceeding was cancelled – Right of petitioner frustrated by arbitrary and illegal action/ conduct of respondent authority – Respondent authority directed to allot and give possession of plot to petitioner after completing requisite formalities – Petition allowed: *Deepak Sharma Vs. Jabalpur Development Authority, I.L.R. (2020) M.P. 377*

– **Article 226** and Prakostha Swamitva Adhiniyam, M.P., 2000 (15 of 2001), Sections 2, 3(b), 3(i) & 4(2) – Cancellation of Lease – Validity and Legality of Lease – Held – Tender document, promoter agreement and provisions of Adhiniyam of 2000 shows that license was given to promoter/ petitioner to construct building and give first allotment to persons of his choice and receive sale consideration for first time out of it – Ownership of shops/ showrooms/chambers was to remain with JDA (lessor) – Promotor had limited rights to nominate a party for execution of lease deed, who will later become lessee of JDA who is entitled to receive transfer fee – No right to execute lease deed of land accrued in favour of petitioner and was clearly impermissible – Such unauthorized transfer of land in favour of promoter dehors the tender document, agreement and Prakoshta Adhiniyam and is void ab initio – Petition dismissed: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– **Article 226** and Public Trusts Act, M.P. (30 of 1951), Section 14 – Sale of Public Trust Property – Fraud – Held – Fraud vitiates everything – Trustees have played fraud upon State government – Properties not been sold for objectives of Trust but with an oblique and ulterior motive – Sale deeds executed by Trust in respect of properties of State are null and void and stands vitiated – State is titleholder of property, it is duty of State to protect and preserve the same – Collector rightly passed order to record the name of State of M.P. in Revenue records: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

– **Article 226** and Public Trusts Act, M.P. (30 of 1951), Section 14 & 36(1)(a) – Khasgi Trust – Sale of Property – Permission – Held – Title in respect of Khasgi properties lies with the State – Properties though managed by the Trust, was vested in State government upon merger and do not form part of property settled with outgoing proprietor/Holkar State – Property belongs to Public Trust and while disposing the same, permission should have been obtained from Registrar, Public Trust or from State: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

3. Alternate Remedy

– **Article 226** – Alternative remedy – Service Law – Difference in the position of workmen under the Industrial/Labour Law and that of a civil servant – Held – Labour Law being a beneficial legislation is more lenient in the matter of technicalities because labour is considered to be illiterate and underprivileged, but the same is not the position of a civil servant and not availing the alternative remedy will not entitle a civil servant to claim relief under the writ jurisdiction: *Om Prakash Dixit Vs. State of M.P., I.L.R. (2016) M.P. 2528*

– Article 226 – Availability of alternative remedy – Issuance of show-cause notice prior to the expiry of the extended period to carry out contractual work – In spite of availability of alternative forum of arbitration for redressal of dispute, if the show-cause notice itself was issued contrary to law and principles of natural justice with preplanned and arbitrary manner to rescind the contract of the petitioner, then by entertaining the petition under Article 226 of Constitution of India such show-cause notice and its proceeding could be quashed – Petition allowed: *Rajkamal Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 1398 (DB)*

– Article 226 – Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 55 r/w Section 64 – Writ Petition – Maintainability – Petitioner retired as Cashier from Co-operative Bank – Claim for retiral dues – Alternate remedy u/S 55 r/w Section 64 of 1960 Act – Defence – Section 55 of 1960 Act not available to a retired employee but is available to serving employee only – Held – Section 55 of 1960 Act makes it clear that the term "Dispute" though not defined in definition clause but includes all terms of employment, working conditions and disciplinary action and terms of employment is wide enough to include retiral claim – It would be travesty of justice to compel the retired employee to approach a different forum than one available to a serving employee – Petition dismissed with liberty to the petitioner to avail alternate remedy provided u/S 55 r/w Section 64 of the 1960 Act: *Purshottam Das Joshi Vs. District Co-operative Central Bank, Datia, I.L.R. (2016) M.P. 2179*

4. Auction/Contract/Tender

– Article 226 – Auction Process & Contract – Terms & Conditions – Scope of Interference – Held – Petitioners having participated in auction process being fully aware of the terms and conditions of policy and on acceptance of their bid, legally enforceable contract/agreement having been entered, they cannot turn to say that particular clauses of policy are illegal – No legal infirmity or violation of any statutory or Constitutional provision established – Petitions dismissed: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Article 226 – Award of Contract – Judicial Review – Scope – Held – Apex Court concluded that matter of award of contract, being essentially a commercial transaction have to be determined on the terms to which tenders are invited and not open to judicial scrutiny unless the same found to be tailor made to benefit any particular tenderer or class of tenderers: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

– Article 226 – Contract for work of execution of canal – Time schedule – Delay on the part of Contractor – Penalty was imposed – The dispute whether there was any delay on the part of the petitioners or on behalf of the respondents can not

be decided in the writ jurisdiction: *Gayatri Project Ltd. Vs. Narmada Valley Development Department, I.L.R. (2016) M.P. *18 (DB)*

– **Article 226** – Contractual Matters – Dispute of question of fact – Bar of maintainability – No doubt, there is no absolute bar to the maintainability of the Writ Petition, even in contractual matter or where there are disputed questions of fact or even when monetary claim is based – At the same time discretion lies with the court, which under certain circumstances it can refuse to exercise: *Gayatri Project Ltd. & B.C. Biyani Project Pvt. Ltd. Vs. Narmada Valley Development Department, I.L.R. (2016) M.P. *38 (DB)*

– **Article 226** – Contractual Matters – Proper Proceedings – Writ Petition is not proper proceeding for adjudication of the disputes related to a contractual obligation – Ascertainment of facts based on contents of affidavit is impermissible in dealing with the contractual disputes – Such issues are needed to be decided after considering the evidence in arbitration proceedings, but not before the writ court: *Gayatri Project Ltd. & B.C. Biyani Project Pvt. Ltd. Vs. Narmada Valley Development Department, I.L.R. (2016) M.P. *38 (DB)*

– **Article 226** – Contractual Matters – Scope & Jurisdiction – Held – Apex Court concluded that interference in contractual matters depends upon prevailing circumstances – There is no absolute bar to exercise jurisdiction under Article 226 in contractual matters – Jurisdiction to interfere is discretion of Court which depends upon facts of each case: *Sky Power Southeast Solar India Pvt. Ltd., New Delhi (M/s) Vs. M.P. Power Management Co. Ltd., I.L.R. (2020) M.P. 1128 (DB)*

– **Article 226** and Contract Act (9 of 1872), Section 2(b) & 5 – Writ Jurisdiction – Scope – Held – Apex Court concluded that jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligations voluntarily incurred – Once the offer is accepted on terms and conditions mentioned therein, a complete contract comes into existence and offer or cannot be permitted to wriggle out of contractual obligations arising out of the acceptance of his bid by a petition under Article 226 of Constitution: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– **Article 226** and Contract Act (9 of 1872), Section 23 – Jurisdiction of Court – Held – There is a valid contract between parties where they agreed to submit suits or legal actions to Courts at Nagpur – Even though a part of cause of action has arisen within jurisdiction of this Court, lis would be amenable to jurisdiction of Courts at Nagpur – Petition dismissed for want of territorial jurisdiction: *AKC & SIG Joint Venture Firm (M/s.) Vs. Western Coalfields Ltd., I.L.R. (2020) M.P. 1134 (DB)*

– **Article 226** and Contract Act (9 of 1872), Section 23 – Territorial Jurisdiction – Agreement/Contract – Held – Where more than one Court has jurisdiction consequent upon a part of cause of action arisen therewith, but where parties stipulate in contract to submit disputes to a specified Court and if contract is a valid one and not opposed to Section 23 of Contract Act, suit would lie in the Court agreed by parties and not to any other Court even though a part of cause of action has arisen within jurisdiction of that Court: *AKC & SIG Joint Venture Firm (M/s.) Vs. Western Coalfields Ltd., I.L.R. (2020) M.P. 1134 (DB)*

– **Article 226** – Mining lease – Auction process – Petitioner was the highest bidder – As per clause 6 of auction notice he was required to obtain environmental clearance certificate – State Authority directed to approach Central Authority for seeking environmental permission – Whether amounts to rejection of permission – Held – No, clause 6 will get activated only when rejection of permission for grant of environmental clearance certificate is made by authority competent to issue such certificate and not by any other authority – Petitioner can approach the Central Authority – Accordingly, petition disposed of: *Shakti Traders (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 473 (DB)*

– **Article 226** and Minor Mineral Rules, M.P. 1996, Rule 6, Schedule I, Serial No. 6 – Auction – Scope – Apex Court concluded that Court cannot mandate one method to be followed in all facts and circumstances – Auction, an economic choice of disposal of natural resources, is not a constitutional mandate – Court can test the legality and constitutionality of these methods when questioned and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provision of Constitution: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 2024 (FB)*

– **Article 226** – NIT – Allotment of Fair Price Shop – Improper Submission of Bid – Held – Respondent No. 2 has shown the number of vehicles in his main application and if there is any discrepancy in number of vehicles as per Ex/10, it is immaterial and liable to be ignored – Defect is minor in nature – Procedural aberration or error of this nature will not make the tender process illegal – Further, there is no allegation of favoritism/nepotism or *malafide* on part of respondent corporation or any of its authority nor there is any public interest involved – No interference required – Petitions dismissed: *Shankarlal Gupta Vs. M.P. State Civil Supplies Corp. Ltd., I.L.R. (2018) M.P. *86*

– **Article 226** – Petitioner's bid was accepted on the understanding that the agreement will be executed in his favour if he obtains all environmental clearances – Same could not be effectuated as the petitioner could not obtain such clearances within the time specified in the tender notice – Petitioner's claim for quashing of re–auction process and interest at the rate of 18% on the security amount – Held –

Claim of interest – Maintainability of writ – Relief of interest in exercise of writ jurisdiction, as claimed, can not be countenanced – Petitioner is free to take recourse to appropriate remedy for interest in common law, if permissible – As the contractual or statutory obligation, is not established by the petitioner he is not entitled for the relief of interest: *Manish Kumar Gupta Vs. State of M.P., I.L.R. (2016) M.P. 789 (DB)*

– Article 226 – Tender – Administrative Decisions – Judicial Review – Scope – Respondent, though lowest bidder was unsuccessful in getting the contract – He filed a petition before High Court which was allowed – Challenge to – Held – Power of judicial review can be exercised only if there is unreasonableness, irrationality or arbitrariness and in order to avoid bias and malafides – If such administrative decisions is in public interest, Court in exercise of power of judicial review under Article 226 shall not interfere even if there is a procedural lacuna – Judicial review will not be permitted to protect private interest, ignoring public interest – Admittedly, successful bidder was more technically qualified and it got more marks – Merely because financial bid of respondent is lowest, requirement of compliance with Rules and conditions cannot be ignored – Court does not sit as a Court of Appeal but merely reviews the manner in which decision was taken – Court does not have expertise to correct the administrative decisions – In the instant case, no bias or malafides on part of corporation or technical experts – Order passed by High Court is set aside – Appeal allowed: *Municipal Corporation, Ujjain Vs. BVG India Ltd., I.L.R. (2018) M.P. 1843 (SC)*

– Article 226 – Tender – Black-listing of Bidder – Grounds – Disproportionate Punishment – Petitioner black-listed by respondents prohibiting him from participating in tenders for 3 yrs. – Held – It is established that petitioner filed false documents with bid and attempted to mislead respondents, eventually petitioners could not get the bid thus neither petitioner firm received any monetary gain nor his misdemeanor resulted in any monetary loss to respondent and finally order of blacklisting was passed after five years of the bid process – Period of black listing imposed is unduly harsh – Period of black listing reduced to 18 months – Petition allowed to such extent: *Fibretech (M/s.) Vs. Bharat Heavy Electricals Ltd., I.L.R. (2018) M.P. 2871*

– Article 226 – Tender – Cancellation – Grounds – Promissory Estoppel – Under a tender by Municipal Corporation, Road Sweeping Machine/Vehicle was supplied by petitioner which was not found as per technical specifications – Tender was cancelled and bank guarantee was invoked by Corporation – Challenge to – Held – It is contractual obligation of petitioner to supply machines as per specification and standard enumerated in tender conditions – 47 defects were pointed out by corporation – If machine is not as per tender conditions, Corporation was well within its jurisdiction to reject the machine – There is no question of Promissory Estoppel – Corporation has paid Rs. 1 Crore of public money to petitioner whereby he failed to

perform his part of contract – Decision to invoke bank guarantee and to cancel the contract is based upon the economic interest of corporation so as not to purchase something which is not likely to serve public purpose – Such decision cannot be held to be arbitrary, unreasonable or invalid which warrants interference – Petition dismissed: *Kam-Avida Enviro Engineering Pvt. Ltd., Pune Vs. Municipal Corporation, Rewa, I.L.R. (2017) M.P. 2349 (DB)*

– Article 226 – Tender – Clauses of "Request for Proposal" (RFP) – Judicial Review – Scope – Held – Entire "Request for Proposal" (RFP) and corrigendum is beneficial to the other license holders/ Telecom Service Providers as they will not be required to set up a parallel network and they can use the infrastructure created by concessionaire – RFP not disturbing the level playing field between licensees – Impugned clauses neither arbitrary nor malafide – Tender process itself has not been challenged – Members of petitioner's association were free to participate and submit their bids – No interference required – Petition dismissed: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

– Article 226 – Tender – In respect of tender for medical shop, petitioner was the third highest bidder and respondent no.2 was the fourth highest bidder – Held – It is apparent from record that in case of petitioner, 1½ days time was granted to deposit the rent amount and when request for extension was made, the same was refused whereas in case of respondent no. 2, initially 4 days time was granted and when request of extension was made, 2 days further time was granted to him – No explanation is available in return filed by the respondent no. 1 why the said discrimination was made – Respondent no. 1 has acted arbitrarily in a discriminating manner by not granting extension of time to petitioner to deposit the rent amount and has executed agreement in favour of respondent no. 2 – Agreement executed by Respondent no. 1 in favour of respondent no. 2 is hereby quashed and respondent no. 1 is directed to execute an agreement in favour of petitioner and allow the petitioner to commission the shop – Petition allowed: *New Balaji Chemist (M/s.) Vs. Indian Red Cross Society (M.P. State Branch), I.L.R. (2018) M.P. 894*

– Article 226 – Tender – Rejection of Highest Bid – Judicial Review – Held – Respondent authority rejected the highest bid without assigning any reason – Authority cannot be allowed to perform their obligations as per their own whims and moods – Such rejection is arbitrary and liable to be reviewed by the Court: *Deepak Sharma Vs. Jabalpur Development Authority, I.L.R. (2020) M.P. 377*

– Article 226 – Tender – Suppression of Facts – Held – A member of petitioner association participated in tender process and was unsuccessful – Fact deliberately concealed in present petition – After playing the game unsuccessfully, rule of game

cannot be challenged – It is a sponsored litigation just to create hindrance – Petitioner delayed a public project for one year – Petition dismissed with cost of Rs. One lakh: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

– Article 226 – Termination of Contract – Grounds – Held – Petitioner invested about 350 Crores in project, the unit is ready for commissioning and only some statutory sanctions are required – Period to commission the project was 24 months from date of PPA but contract was terminated even before expiry of outer limit of 24 months – Termination of contract is wholly unjustified and arbitrary – Plea of alternative remedy has no merits – Impugned order quashed – Petition allowed: *Sky Power Southeast Solar India Pvt. Ltd., New Delhi (M/s) Vs. M.P. Power Management Co. Ltd., I.L.R. (2020) M.P. 1128 (DB)*

– Article 226 – Writ – Maintainability – Order passed by Collector/Secretary, District E-Governance Society was called in question whereby, the contract granted to the petitioner was terminated on the ground that despite successfully running Lok Seva Kendra and without giving any notice regarding deficiency of service, contract was not renewed and a fresh RFP (Request for Proposal) was issued – Held – Since it was a pure and simple contract given to the petitioner to run Lok Seva Kendra, no time limit was vested in the petition to claim renewal of the contract – It is the discretion of the employer either to renew the contract or to issue fresh RFP – Same can not be questioned unless it is arbitrary or tainted with malafide to achieve some hidden agenda – Controversy is purely in the realm of contract – Writ Petitions in such cases are not maintainable – Petition is dismissed: *Kunti Singh (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2787*

– Article 226 – Writ Jurisdiction – Locus – Held – Petitioner has no locus to increase/revise the offer of bid in writ proceedings that too after a period of more than one year from date of confirmation of sale: *Century 21 Town Planners Pvt. Ltd. Vs. J.M. Finance Assets Reconstruction Co., I.L.R. (2018) M.P. 2382 (DB)*

– Article 226 – Writ Petition for quashing show cause notice regarding "Condition of contract" and "Special Condition" – Maintainability – Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983) – The Arbitration Tribunal can decide both questions of fact as well as questions of law – When the contract itself provides for a mode of settlement of disputes arising from the contract, for referring the matter to the M.P. Arbitration Tribunal under the M.P. Madhyastham Adhikaran Adhiniyam 1983 – There is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226 – Writ Petition has no merit and accordingly dismissed: *Gayatri Project Ltd. & B.C. Biyani Project Pvt. Ltd. Vs. Narmada Valley Development Department, I.L.R. (2016) M.P. *38 (DB)*

– **Article 226** and Minor Mineral Rules, M.P. 1996, Rule 68 – Condition inserted in Rule 68 after 23.03.2013 is mandatory in nature – Every quarry permit holder & Contractor to obtain 'No Mining Dues' Certificate from the Mining Officer/ Officer-in-charge concerned after due verification of documents submitted by the Contractor/quarry permit holder – Amendment in Rule 68 cannot be waived or diluted: *R.S.A. Builders & Const. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. *21 (DB)*

5. Bank Guarantee

– **Article 226** – Encashment of Bank Guarantee which is valid and extended thrice in the past by the bank – Whether bank was justified in law in refusing to en-cash a confirmed and irrevocable Bank Guarantee issued by it – Held – When in the course of commercial dealings, unconditional guarantee is given and accepted by the beneficiary, the beneficiary is entitled to realize such a Bank Guarantee on the very demand and his demand is conclusive – Bank Guarantee is independent of primary contract between the parties – Stand taken by bank is untenable – Petition is allowed with costs of Rs. 25,000/-: *M.P. Poorv Kshetra Vidyut Vitran Co. Ltd. Vs. M/s. Easun Reyrolle Ltd., Chennai, I.L.R. (2016) M.P. 2532 (DB)*

6. Blacklisting

– **Article 226** – Blacklisting – Principle of Natural Justice – Opportunity of Hearing – Petitioner company blacklisted by respondents – Held – No show cause notice issued and no opportunity of hearing was granted to petitioner – Apex Court concluded that an order of blacklisting has civil consequences and could not be passed without notice – Impugned order is also not a reasoned speaking order – Impugned order quashed – Petition allowed: *Technosys Security Systems Pvt. Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 866 (DB)*

7. Caste Certificate

– **Article 226** – Caste Certificate – Report of High Power Scrutiny Committee – Interference – Held – Apex Court concluded that High Court is not a Court of appeal to appreciate the evidence – Court has to see whether Committee considered all relevant material placed before it and has applied its mind to relevant facts which led the committee to record the findings – Each case must be considered in backdrop of its own facts: *Kulsuma Begum Khatoon (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2808 (DB)*

– **Article 226** – Election of Sarpanch – Caste Certificate – High Power Scrutiny Committee – Held – Apex Court concluded that proceedings of Committee are civil in nature and burden of proof is on the person who claims the caste status, to prove his/her case with cogent material, it is not the duty of State to disprove or

otherwise – Committee considered entire material placed before it and found that appellant failed to discharge the burden to prove that she belonged to a particular caste of OBC category and found her caste certificate not genuine – No interference required – Writ Appeal dismissed: *Kulsuma Begum Khatoon (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2808 (DB)*

8. Compassionate Appointment/Regularization//Pay Scale

– Article 226 – Service Law – Compassionate Appointment – Petitioner's claim for compassionate appointment has been turned down by D.E.O. on the ground that she has not completed Higher Secondary Examination – After obtaining requisite qualification she again applied which was also turned down in view of circular dt. 13.01.2011 holding the same to be made after expiry of 7 years and barred by 2 months – Held – Though the appointment on compassionate ground being not a right but a privilege to help the family of the deceased government servant to meet financial crises – Non-consideration of appointment on the ground of not having requisite educational qualification and on the ground of delay – State functionaries are not justified in their action – Secretary is directed to take a decision in the matter within 3 months: *Vidya Bai Patel (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2693*

– Article 226 – Service Law – Non payment of regular pay scale – Petitioner was appointed as Samvida Shala Shikshak Grade III on 3.2.2007 and later on was absorbed as Adhyapak – She was receiving fixed salary of Rs. 5000/- per month from the year 2007, though she was regular employee – Held – Respondents are directed to pay the arrears of regular pay scale salary with interest @ 8.5% per annum to the petitioner, if not paid within two months, the petitioner shall be entitled for 12.05% interest till the date of actual payment: *Sarita Mishra (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3270*

– Article 226 – Service Law – Regularization – Petitioners initially appointed for three years on contract basis which was further extended for two years – Seeking regularization on the basis of working on contract for five years – Held – Contract appointment was for fixed tenure – Non renewal of contract appointment is not illegal, unfair or irrational – Respondents have neither adopted policy of pick & choose in renewing the contract appointment nor they have renewed contract of less meritorious and nor denied renewal of contract to more meritorious/earlier appointees – No case of interference – Petition dismissed: *Ranjit Singh Bhadoriya Vs. State of M.P., I.L.R. (2016) M.P. 2263*

9. Constructive Res-Judicata

– Article 226 – Constructive Res-Judicata – Held – When an earlier petition has already been decided by Division Bench and further approved by Supreme Court,

this Court should not entertain a successive petition challenging the same orders adding some additional grounds and ancillary relief: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

10. Criminal Jurisdiction

– Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 362 & 482 – Criminal Jurisdiction – Intra Court Appeal – Held – A final order passed in a petition filed under Article 226 for quashing criminal proceeding, would still be the order of a Court exercising criminal jurisdiction and thus bar u/S 362 will squarely apply – Review petition not maintainable: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

11. Custody of Minor Child

– Article 226 and Hindu Minority and Guardianship Act (32 of 1956) – Section 6 – Custody of Minor Child – Held – Child is 15 months of age and in view of Section 6 of the Act of 1956, child has to be given in custody of mother: *Madhavi Rathore (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2453*

– Article 226 and Hindu Minority and Guardianship Act (32 of 1956), Section 6 – Custody of Minor Child – Power of Attorney – Held – Child is aged about 2 years, thus in view of Section 6 of Act of 1956, child has to be given in custody of the mother – Power of Attorney given by father of child to grand parents to look after the child – Such procedure/document do not create any right in favour of grand parents: *Anushree Goyal Vs. State of M.P., I.L.R. (2020) M.P. 1565*

12. Delay & Laches

– Article 226 – Appointment – Delay and Laches – Petitioners appeared in competitive examination held by M.P. Junior Service Selection Board in the year 1984-85 for appointment for posts of Lower Division Teachers – They were declared successful however appointment orders were not issued – One similarly placed candidate filed O.A. before State Administrative Tribunal which was allowed and the order was affirmed by Supreme Court – The present petition is being filed after 20 years seeking parity – No explanation furnished by the petitioners for delay in filing the petition – Persons who file belated petitions claiming similar and identical relief which has been granted to those similarly situated persons are not entitled to any relief on the ground of delay and laches – Petition dismissed: *Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 481*

– Article 226 – Consideration of representation – Delay and Laches – Practice to direct for consideration of representation even in cases of long delay and laches and thereby reopening the cases which are dead due to lapse of time is not proper and should not be done: *Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 481*

– Article 226 – Delay & Laches – Effect – Held – Petition was filed nearly seven years after the approval for modification was granted – Meanwhile 42 out of 52 plots sold and third party interest created – Innocent and bonafide plot owners constructed their house and they were not even heard before passing such adverse order – Considerable delay has resulted into change in position – High Court should not have entertained the petition: *M.P. Housing & Infrastructure Development Board Vs. Vijay Bodana, I.L.R. (2020) M.P. 1522 (SC)*

– Article 226 – Delay & Laches – Maintainability – Held – Successive representations would not give a fresh cause of action – Petitioner was sleeping over his rights – No explanation for delay – Stale cases cannot be re-opened – Respondents cannot be directed to decide representations made in respect of stale cases – Petition suffers from delay and laches and is thus dismissed: *Chandrapal Singh Sengar Vs. State of M.P., I.L.R. (2020) M.P. *19*

– Article 226 – Writ of "Quo Warranto" – Delay & Laches – Held – Apex Court concluded that delay and laches do not constitutes any impediment to consider the lis – Writ of Quo Warranto cannot be dismissed on ground of delay and laches: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Limitation Act (36 of 1963) – Applicability – Writ Petition not being a suit nor an application to which Limitation Act applies – No limitation is provided for such proceeding – But the equitable principle of delay has been applied – Where the delay is unreasonable and unexplained, as a rule of discretion the issuance of Writ may be denied: *Subhash Vs. Poonamchand, I.L.R. (2016) M.P. 2154 (DB)*

13. Departmental Enquiry/Disciplinary Authority

– Article 226 – Departmental Enquiry – Petition against the issuance of charge sheet based upon certain act – Petitioner is working as lower division clerk (LDC) and respondent No. 3 is working as principal in the said college – Earlier the respondent No. 3 has lodged a false complaint in which the police after investigation found no plausible facts or truth – In the present case the charge sheet has been issued by the principal at the instance of the Commissioner Higher Education – Departmental enquiry is at its inception and at preliminary stage, therefore, unless the enquiry is completed, proceeding cannot be considered to be vitiated in respect of procedural bias – Petition dismissed: *Sanjay Kumar Pathak Vs. Government of M.P., I.L.R. (2017) M.P. *13*

– Article 226 – Departmental Enquiry – Scope of Interference – Held – Findings of Single Judge on merits of charge, in favour of R-4 were not warranted because finding on charge will be recorded by enquiry officer/competent authority on conclusion of departmental enquiry – At this stage, R-4 cannot be given clean chit especially when entire material is not before Court – Observation made by Single Judge set aside: *Neerja Shrivastava Vs. State of M.P., I.L.R. (2020) M.P. 1532 (DB)*

– Article 226 – Departmental Enquiry – Scope of interference – Held – In exercise of writ jurisdiction the scope of judicial review is limited to decision making process and is circumscribed, as the High Court does not sit over the decision as a Court of appeal: *Raj Kumar Vishwakarma Vs. State of M.P., I.L.R. (2016) M.P. 115 (DB)*

– Article 226 – Departmental Enquiry – Validity of charge sheet – Gravity of charges of misconduct are required to be tested only in departmental enquiry by Enquiry Officers while recording evidence – Whether there were any lapses on the part of petitioner in discharging the duty as Registrar of University or not has to be tested by the Enquiry Officer while conducting the enquiry – High Court is not required to look into those aspects nor is supposed to conduct the enquiry on its own to test the validity of charge sheet – Petition dismissed: *Brajesh Singh (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 110*

– Article 226 – Disciplinary Proceeding – Punishment – Principle of Natural Justice – Held – Petitioner has cross examined the witnesses – It is not a case of no evidence – Petitioner failed to file reply of charge-sheet – No violation of principle of natural justice – Regarding scope of interference in matter of punishment inflicted by disciplinary authority, Apex Court concluded that it is not proper for High Court to re-appreciate the evidence adduced by parties – Petition dismissed: *Anil Pratap Singh Vs. State of M.P., I.L.R. (2020) M.P. 1858*

– Article 226 and Judges (Protection) Act (59 of 1985), Section 3 – Directions for Registration of Offence & Conducting Disciplinary Enquiry – Misappropriation of seized/sealed article (gold) preserved in Sub-Treasury – Held – Single Judge was well within his jurisdiction directing for a fact finding enquiry by disciplinary authority and registration of offence by CID: *JMFC Jaura, Distt. Morena Vs. Shyam Singh, I.L.R. (2020) M.P. 1273 (DB)*

14. Election

– Article 226 – Writ – Petitioner declared disqualified to take part in coming election of 2014 for the post of Chairman, Nagar Panchayat, due to failure to furnish accounts of election expenses of earlier election held in 2009 – Show cause notice was not served to the petitioner, instead it was served to the father of petitioner –

Held – Such an order of disqualification cannot be sustained under the law: *Vimlesh Vanshkar (Ku.) Vs. State of M.P., I.L.R. (2016) M.P. 757*

– Article 226 – Cantonment Electoral Rules, 2007 – Rule 54 & 55 – Maintainability of writ petition – Challenge to the voter list – Alternate remedy – Election Petition under Rule 54 of the Rules of 2007 – Election Petition is not maintainable either for inclusion or exclusion in the electoral rolls: *Sunil Kumar Kori Vs. Gopal Das Kabra, I.L.R. (2017) M.P. 261 (SC)*

15. FIR

– Article 226 – Quashing of FIR – Complainant was told to pay illegal gratification for his posting – FIR reflects that when complaint was made to Lokayukt a digital voice recorder was provided to complainant for recording conversation – After obtaining recorded conversation trap was set up – Rs. 10,000/- and the document pertaining to posting of complainant was also seized – Held – Complainant has made clear and specific allegation against the petitioner – Allegations clearly constitute a cognizable offence – No case to exercise extraordinary or inherent powers to quash the FIR – Petition is dismissed: *Mahendra Kumar Dwivedi Vs. Special Police Establishment, Lokayukt Organization, Bhopal, I.L.R. (2016) M.P. 2783 (DB)*

– Article 226 – Registration of FIR Against Police Officials – Fight amongst the Police Officials and Army Trainee Officers – Police authorities lodged three FIR against the army officers whereas no report was lodged against any police officers despite written complaint filed by the Army Officers – Held – On written complaint, investigation conducted by Addl. S.P. whereby despite of the fact that some Army Officers sustained fractures and without considering medical evidence concluded that no case is made out against Police Officers – Allegation regarding Army Officers for consuming liquor openly has been specifically denied by respondents nor there is any medical evidence in this respect – Young Army Officers were beaten by Police personnel for which medical reports are present on record – Police did not investigate the matter properly and impartially – Material on record prima facie calling for an investigation by independent agency – CBI directed to take over investigation of the case – Petition allowed: *Pramod Kumar Dwivedi Vs. State of M.P., I.L.R. (2017) M.P. 2103 (DB)*

– Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Maintainability of Writ Appeal – Writ petition and application u/S 482 were decided together by a common order whereby FIR against respondent was quashed by Single Judge – Held – Single Judge exercised writ jurisdiction while quashing FIR – Writ appeal is maintainable: *State of M.P. Vs. Sanjay Kumar Koshti, I.L.R. (2018) M.P. 2369 (DB)*

16. Gratuity

– Article 226 – Payment of Gratuity Act (39 of 1972), Section 2(f) & 2(i) and Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetano Ka Sanday) Adhiniyam, M.P. (20 of 1978) – Benefit of Gratuity – Entitlement – Held – Teachers/employees working in grant-in-aided institutions are under the control of State Government – Looking to the definition of "Employer" u/S 2(f) of the Act of 1972, State of M.P. is the employer of the petitioners for the purpose of gratuity and State being the employer is liable to make payment of amount of gratuity to the employees/teachers working at such institutions – Further held – Persons who are being appointed prior to Amendment Act of 2000 which came into force on 01.04.2000 shall be continue to be covered by the Act of 1978 – Claim of the petitioner to receive gratuity from State of M.P. is established – Petitions allowed: *Ramjilal Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1850*

17. Habeas Corpus

– Article 226 – Custody of Minor Child – Habeas Corpus – Maintainability of Petition – Held – Writ petition for issuance of a writ in nature of Habeas Corpus under Article 226 in peculiar facts and circumstances of case is certainly maintainable: *Madhavi Rathore (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2453*

– Article 226 – Habeas Corpus – Claim of Custody of Children – Maintainability – Held – Such claim cannot be acceded to by this Court in a writ of habeas corpus – Wife free to avail remedy available to her under law: *Vicky Ahuja Vs. State of M.P., I.L.R. (2019) M.P. 1690*

– Article 226 – Habeas Corpus – Compensation – It was alleged that respondent no.4 (Petitioner's brother-in-law) was taken by the police authorities for interrogation and thereafter he never returned home and was missing – CID enquiry and Judicial enquiry ordered whereby enquiry reports revealed that Respondent No.5 arrested the corpus and police authorities placed some other person before the SDM and it also revealed that arrest memo and bail bonds did not bear signatures of the corpus – FIR was registered against the police officer and compensation of Rs. 5,80,000 was ordered to be given to wife of corpus subject to an undertaking to be given by her that if corpus is found alive, compensation amount will be returned back – Petition disposed of: *Ramhit Lodhi Vs. State of M.P., I.L.R. (2017) M.P. 1050 (DB)*

– Article 226 – Habeas Corpus – Custody of Child – Maintainability – Child of 2 years is with grand parents – Mother claiming custody of child – Held – Petition of habeas corpus maintainable – Welfare of child is of paramount importance – Mother and her parents are well educated – It has been observed that child is more than

happy with his mother, showing more affection towards her than the grand parents – Mother, who nurtured the child for nine months in her womb, is certainly entitled for custody of child keeping in view the statutory provisions governing the field – Grand parents directed to hand over custody of child to mother – Petition allowed: *Anushree Goyal Vs. State of M.P., I.L.R. (2020) M.P. 1565*

– Article 226 – Habeas Corpus – Custody of Minor Child – Held – Child is 15 months of age and mother who nurtured the child for 9 months in womb is certainly entitled for custody of child – Welfare of child is of paramount importance – Mother is well educated – Nothing on record to show that parents of petitioner/mother with whom she is living are not capable to maintain petitioner and her child – Respondents directed to handover custody of child to petitioner/mother – Petition allowed: *Madhavi Rathore (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2453*

– Article 226 – Habeas Corpus – Custody of Minor Son – Held – Apart from custody, welfare of the minor child has to be considered – Wife (petitioner) left the matrimonial house leaving her minor child of 1½ yrs. old in company of sister of her friend, which does not amount to abandoning the child – Petitioner returned immediately after receiving information that her husband has consumed some poisonous substance – She being the natural guardian, is the best person to look after the child – Custody of minor child handed over to petitioner – Petition disposed: *Roshni @ Roshan (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1085*

– Article 226 – Habeas Corpus – Investigation by CBI – Jurisdiction of Court – Held – Whereabout of petitioner's minor daughter aged about 15 years is not known for about four years and particularly when allegation of kidnapping has been leveled – Progress reports submitted by police from time to time reveals that proper steps have not been taken to find out the corpus – Police authorities have utterly failed to carry out investigation and search the corpus inspite of possible lead available with them – Since the police as well as SIT constituted for this purpose failed to produce the corpus even after lapse of four years, investigation and inquiry is required to be done by any independent agency which is not influenced in any manner whatsoever either by SIT or the local police authorities – Further held – It is well settled in law that in a given case, if the material indicates prima facie irregularity in the matter of investigation, the Supreme Court and High Court have power and jurisdiction to order for investigation by CBI or by any independent agency – Matter handed over to CBI – Petition partly allowed to this extent: *Ram Sharan Baghel Vs. State of M.P., I.L.R. (2018) M.P. 917*

– Article 226 – Habeas Corpus – Maintainability – Locus Standi – Missing wife, later recovered by police from custody of petitioner (paramour) – Held – Corpus voluntarily stated that she wants to live-in with petitioner, thus petitioner had sufficient

interest (*locus*) to move this petition – *Corpus* being adult and in good mental and physical health, there can be no hindrance to her right to stay with whomsoever she wishes – *Corpus* set at liberty to go with whomever she wants to – Petition disposed: *Vicky Ahuja Vs. State of M.P., I.L.R. (2019) M.P. 1690*

– Article 226 – Habeas Corpus – Scope – Custody of Minor Child – Held – In a petition of Habeas Corpus, it was incumbent upon Court to decide the question of custody of the child – Personal allegations made against each other by the petitioner and respondents are not being taken into consideration because they are beyond the scope of Habeas Corpus petition: *Roshni @ Roshan (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1085*

– Article 226 – Writ of Habeas Corpus – Custody of Minor Child – Mother of minor child (4 yrs.) seeking writ against father/ husband on allegation that father took away the child unlawfully from her custody – Child was produced before the Court – Held – Divorce between husband and wife by mutual consent whereby they agreed before Family Court that child will live with her mother and accordingly child was handed over to mother at the time of divorce – Looking to the welfare of child and after interaction with the child whereby child expressed his willingness to go with mother, it is directed that child has to be in custody of mother: *Roshini Choubey Vs. Subodh Gautam, I.L.R. (2019) M.P. 1003 (DB)*

– Article 226 – Writ of Habeas Corpus – Locus Standi – Held – In a petition seeking relief of a writ of Habeas Corpus, there must be a relationship between missing/detained corpus and the petitioner or he will have to establish how he has sufficient interest in order to pray for a writ of Habeas Corpus: *Santosh Pal Vs. State of M.P., I.L.R. (2019) M.P. 1062*

– Article 226 – Writ of Habeas Corpus – Maintainability – Held – Writ petition for issuance of writ in nature of Habeas Corpus under Article 226 of Constitution against father of the child who took the child unlawfully from custody of his mother, is maintainable: *Roshini Choubey Vs. Subodh Gautam, I.L.R. (2019) M.P. 1003 (DB)*

– Article 226 – Writ of Habeas Corpus – Petitioner challenged the order passed by Bal Kalyan Samiti seeking production of respondent No. 5 before the Court, contending that she is his newly wedded wife – Offence u/S 363 & 366 A of IPC is registered against the petitioner – Respondent No. 5, who is minor girl, is in custody of Balika-Grah under the order passed by the Judicial Magistrate First Class – Held – Writ of habeas corpus lies only when corpus is in illegal custody – Respondent No. 5, who is minor girl, has been sent to Balika-Grah by judicial order, which is not illegal – Petitioner, who is facing trial u/S 363 & 366 A of IPC, cannot be given

custody of a minor girl, because he is not 'fit person' under Juvenile Justice (Care & Protection of Children) Act 2015 – No substance in writ petition, hence dismissed: *Irfan Khan Vs. State of M.P., I.L.R. (2016) M.P. 3058 (DB)*

– Article 226 – Writ of Habeas Corpus – Territorial Jurisdiction – Held – Mother is residing at Indore, divorce has taken place in Indore, statement was given by father at Family Court, Indore, permitting mother to keep the child – Writ petition is maintainable at Indore: *Roshini Choubey Vs. Subodh Gautam, I.L.R. (2019) M.P. 1003 (DB)*

– Article 226 and Guardians and Wards Act (8 of 1890) Section 4 – Habeas Corpus – Custody of Child – Jurisdiction – Applicability on Foreign National – Held – Though child is a USA citizen, but mother is an Indian Citizen and she do have the legal right to file writ petition under Article 226 and pray issuance of writ of Habeas Corpus – Court will not throw away the petition on ground of jurisdiction or on ground of alternative remedy available under Guardians and Wards Act, 1890: *Anushree Goyal Vs. State of M.P., I.L.R. (2020) M.P. 1565*

18. Impleadment of Parties

– Article 226 – Maintainability of Petition – Impleadment of Parties – In respect of a dispute regarding sale of land, Petitioner (purchaser) seeking direction to Respondent/State for registering FIR against the sellers u/S 420, 467, 468, 471 and 120-B IPC and u/S 22-A of Registration Act – Held – Petitioner wanted a direction from this Court against the sellers without impleading them as parties – Petition is liable to be dismissed on this ground alone – Further held – Petitioner is having remedy to approach the Magistrate u/S 156 CrPC or to resort the remedy available under civil law – Writ Petition not maintainable – Petition dismissed: *Surendra Kumar Vs. State of M.P., I.L.R. (2017) M.P. *74*

19. Judicial Review/Scope & Jurisdiction

– Article 226 – Administrative Decision – Judicial Review – Scope – Held – Scope of judicial review of administrative action is very limited – High Court while exercising its power of judicial review of administrative decision cannot interfere with the decision unless the same suffers from the vice of illegality, irrationality or procedural impropriety – It is not permissible for Court to examine validity of decision but can only examine the correctness of decision making process: *Municipal Council Neemuch Vs. Mahadeo Real Estate, I.L.R. (2020) M.P. 278 (SC)*

– Article 226 – Commissioner, Public Education, M.P. is directed to conduct enquiry in respect of delay of payment of regular pay scale – State government is free to recover interest components from the Officer held guilty – Commissioner

shall submit compliance report to the Court about enquiry: *Sarita Mishra (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3270*

– Article 226 – Compensation to victims of 1984 riots – First Information Report lodged – Various directions by High Court to the State Government to provide compensation to the victims of 1984 riots – Petitioners of both the Writ Petition filed applications before District Magistrate claiming compensation – State Government in mechanical manner have rejected the claim – Held – FIR and quantum of loss has not been denied/disputed by the respondents – Collector directed to pay compensation towards the losses incurred by the petitioners alongwith interest @ 8.5% per annum, right from the date of loss suffered since 1984 till it is actually paid – Further directed to complete the exercise within a period of ninety days from the date of order failing which, shall have to face suo motu contempt proceeding – Petition allowed: *Surjeet Singh Vs. State of M.P., I.L.R. (2017) M.P. *43*

– Article 226 – Expert Opinion – Judicial Review – Jurisdiction – Held – This Court should not act as a Court of Appeal in matter of opinion of experts in academic matters – Power of judicial review is concerned not with the decision but with decision making process – Court should not under the guise of preventing abuse of power be itself guilty of usurping power: *Nitin Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2314 (FB)*

– Article 226 – False Statement – Contempt of Court – Held – False statement made by respondents, misleading the Court and *prima facie* interfered with the justice delivery system – They are guilty of contempt of Court – Notice issued to respondents: *Nagpur Diocesan Trust Association Vs. State of M.P., I.L.R. (2019) M.P. 2291*

– Article 226 – Government Lands – Private lands purchased by petitioners (colonizers), layout plan was sanctioned by Municipal Corporation, taxes were paid, colony was developed, Nazool Department issued NOC, plots allotted to general public where they started their house construction and later in 2017, respondents ordered to record the said land as government land on the ground that by playing fraud in the year 1950, it was mutated as private lands by some Bhumafia – Held – If such recourse is permitted to prevail, no sanctity would be attachable to permissions/ approvals of Government based whereupon public invested their lifetime savings and hard earned money for building a home – Such action is colourable exercise of power and wholly without jurisdiction – Impugned order quashed – Petition allowed: *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– Article 226 – Grant of liquor licence – High Court do not formulate any policy – Remains away from making anything that would amount to legislation, rules and regulations – This court cannot direct the respondents to revive the license and

extend the period of license or permit the petitioner to carry out the contract for the remaining period on the same amount on which the respondent No. 7 was awarded – The petitioner is the author of the situation – After cancellation of license, he remained silent till the period expired – He never filed any application or made request to the authority to permit him to carry out the license or deposit the arrears of remaining period – Therefore, no direction for extending the period of license or directing the respondents to permit to continue the license or restraining the respondents from auctioning the license for the period from 2016-17 can be issued: *Rajesh Malviya Vs. Commercial Taxes Department (Excise), I.L.R. (2017) M.P. 289 (DB)*

– Article 226 – Investigation by CBI – Charge-sheet already filed – Merely charge-sheet has been filed it will not take away the power of the Court to direct for fresh investigation by CBI: *Kalyani Pandey (Ku.) (Dr.) Vs. Union of India, I.L.R. (2016) M.P. 17 (DB)*

– Article 226 – Investigation by CBI – Police did not register FIR inspite of information regarding commission of cognizable offence – Inspite of handing over of investigation to a senior officer on the instruction of the General Administration Department, accused persons were not arrested – Interrogation of eye witnesses and other witnesses and their statements u/s 161 of Cr.P.C. also not recorded – FIR was also registered belatedly and that too on the intervention of the Court – In view of material discrepancy in investigation and bias attitude of State Investigating agency in holding investigation is apparent – Impugned investigation and filing of charge-sheet cannot be said to be impartial – Direction issued for fresh and impartial investigation by CBI and till filing of fresh charge-sheet, proceedings in trial pending in Sessions Court shall remain stayed: *Kalyani Pandey (Ku.) (Dr.) Vs. Union of India, I.L.R. (2016) M.P. 17 (DB)*

– Article 226 – Judicial Review – Scope and Interference – Jurisdiction of High Court – Held – Power of judicial review under Article 226 is not as Court of appeal but to find out whether the decision making process is in accordance with law and is not arbitrary or irrational – Further held – Even if High Court finds some illegality in the decision of the State Government, jurisdiction of High Court under Article 226 is to remit the matter to authority for reconsideration rather than to substitute the decision of competent authority with that of its own – Decision of the State Government holding that petitioner is not suitable, is just, fair and reasonable keeping in view the nature of the post and the duties to be discharged: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627 (FB)*

– Article 226 – Judicial Review – Scope & Jurisdiction – Held – Government and their undertakings do have free hand in setting terms of tender and unless the same are arbitrary, discriminatory, *malafide* or actuated by bias, scope of interference

by Courts does not arise – Apex Court held that Court shall not interfere in such matter only because it feels that some other terms in tender would have been fairer, wiser or more logical: *Air Perfection (M/s) Vs. State of M.P., I.L.R. (2019) M.P. 1679 (DB)*

– Article 226 – Judicial Review and Alternate Remedy – Held – In exercise of powers of judicial review, this Court examines the decision making process but not the decision itself – In the present case, although election petition is an alternate remedy available and thus present PIL is not maintainable, it is just because petition is pending since more than a year, matter is heard and decided on merits: *Vinayak Parihar Vs. State of M.P., I.L.R. (2018) M.P. 1101 (DB)*

– Article 226 – Policy decision – Judicial review – It is well settled that the Courts do not ordinarily interfere with the policy decisions unless the decisions are based on mala fide, or are contrary to statutory provisions or unconstitutional or is abuse of power: *Community Action Vs. State of M.P., I.L.R. (2016) M.P. 1640*

– Article 226 – Power of judicial review – Do not ordinarily interfere with the policy decision of the executives unless the policy can be faulted with arbitrariness, unreasonableness or unfairness etc: *Rajendra K. Gupta Vs. Shri Shivrajsingh Chouhan, Chief Minister of M.P., I.L.R. (2016) M.P. 3276 (DB)*

– Article 226 – Jurisdiction – Held – Search and seizure by police officer is illegal and without jurisdiction – In such circumstances, invoking jurisdiction under Article 226 is not barred: *Pitambra Industries Vs. State of M.P., I.L.R. (2018) M.P. 2093 (DB)*

– Article 226 – Jurisdiction & Power – Term "any person or authority" & "any other purpose" – Held – Article 226 confers power on High Courts to issue writs for enforcement of fundamental rights as well as non-fundamental rights – The words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of State – They may cover any person or body performing public duty – The word means enforcement of legal right and performance of any legal duty: *Mahesh Kumar Jha Vs. Union of India, I.L.R. (2020) M.P. 342 (DB)*

– Article 226 – Jurisdiction of Court – Held – It is trite law that Courts are not to act as an appellate authority and scope of interference in matter of departmental enquiry is limited, unless it is established that there is violation of statutory provisions or principles of natural justice, or the findings are manifestly perverse: *Rudrapal Singh Chandel Vs. State of M.P., I.L.R. (2017) M.P. 2333*

– Article 226 & Law of Torts – Writ of Mandamus – Scope & Jurisdiction – Held – Proceedings under Article 226 are summary in nature – Whether State was

actually negligent in discharge of its lawful functions, involves complex question of facts and this Court cannot enter into such disputed facts – It can be proved by adducing evidence before Civil Court in a suit for damages – Petitioner may file such suit, if desired: *Saida Bi (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1055*

– Article 226 – Locus Standi – Person Aggrieved & Person with Sufficient Interest – Discussed and explained: *Santosh Pal Vs. State of M.P., I.L.R. (2019) M.P. 1062*

– Article 226 – Magisterial Enquiry – Scope, Purpose & Procedure – Guidelines of State Government – Quashment – Held – It is fact finding enquiry and no punishment can be imposed upon persons who are found guilty, it lays down a foundation to proceed against delinquent officer – Such enquiry report is not admissible as evidence – Provisions of Evidence Act and Cr.P.C. are not binding on such enquiry – As per guidelines of State, there is no requirement to give an opportunity of cross examining the witnesses – Findings of such enquiry is not final and not binding on any Court of law – Accused has no right to suggest the manner and method of investigation and by whom it should be done – In present case, no final decision taken by State on enquiry report nor petitioner established that enquiry officer was biased – Petition is premature and hence dismissed: *Anil Singh Bhadauria Vs. State of M.P., I.L.R. (2019) M.P. 799*

– Article 226 – Maintainability – Objections – Res-judicata, alternate remedy, disputed question of facts, laches, locus – Held – Objection regarding maintainability of the Writ Petition deserves to be rejected: *Gangaram Loniya Chohan Vs. State of M.P., I.L.R. (2016) M.P. 1359 (DB)*

– Article 226 – Maintainability of Petition – Jurisdiction – Held – Petitioner was denied equality before law and equal protection of law, thus entitled to invoke jurisdiction under Article 226/227 of Constitution: *Maa Kasturi Bai Filling Station (M/s.) Vs. Indian Oil Corporation, I.L.R. (2018) M.P. 2831*

– Article 226 – Maintainability of Writ Petition – Petition filed by Secretary & Joint Secretary of the District Bar Association – No resolution, authority or power given by the District Bar to file petition – Petition filed in an unauthorised manner and not maintainable: *District Bar Association Burhanpur Vs. State Bar Council of M.P., Jabalpur, I.L.R. (2017) M.P. *18 (DB)*

– Article 226 – Model By-laws – Adhoc Committee appointed by State Bar Council questioned – Term for which Bar Association was elected is over – Even the period of 90 days as per model by-laws, by which election could be conducted by the body is also over – The petitioners and even the elected body has no right to continue in their posts or take any further steps to conduct fresh election – Declined interference

– State Bar Council free to conduct election through Adhoc body or nominate other Adhoc body: *District Bar Association Burhanpur Vs. State Bar Council of M.P., Jabalpur, I.L.R. (2017) M.P. *18 (DB)*

– Article 226 – Moulding of relief – Powers and duties – To do substantive justice, if same flows from the fact of the case – Petition can not be non-suited on hyper technical grounds – Permitted moulding: *Harendra Jaseja (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 384*

– Article 226 – Professional Misconduct – Held – This Court has no jurisdiction to consider that whether an Advocate has committed professional misconduct or not – It is within the exclusive domain of the State Bar Council: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Recruitment – Suitability – Judicial Review – Scope – Held – Apex Court concluded that in respect of decisions of expert bodies like Selection Committee, scope of judicial review is extended to examine existence of bias, *malafide* and arbitrariness whereas in case of decision of Screening Committee, scope is confined to existence of *malafide* only – In instant case, decision of Screening Committee is final unless *malafide* established – Court cannot sit in appeal and examine the decision of screening committee regarding suitability of candidate: *Virendra Jatav Vs. State of M.P., I.L.R. (2020) M.P. 2104*

– Article 226 and Arms Act (54 of 1959), Section 17(3)(b) – Arms License – Revocation – Scope & Jurisdiction – Held – Court in exercise of power under Article 226, can look into the reasoning assigned by authorities while passing order of revocation of arms license as to whether it satisfies the purpose mentioned in Statute: *Abdul Saleem Vs. State of M.P., I.L.R. (2019) M.P. 838*

– Article 226 – Review – Grounds – Held – For review there must be error apparent on face of record – Re-appraisal of entire evidence on record for finding error would amount to exercise of appellate jurisdiction which is not permissible – Mere fact that two views on a subject are possible is not a ground of review of earlier judgment passed by a bench of same strength – When remedy of appeal is available, power of review should be exercised by Court with great circumspection: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

– Article 226 – Scope – Held – Apex Court concluded that in absence of malafides, Court should be slow to interfere with exercise of discretion by an expert administrative body – Where there are complicated question of law and fact and basic facts are disputed, a writ cannot lie – Suit is the proper remedy: *Sandeep Sharma Vs. Union of India, I.L.R. (2019) M.P. 2513 (DB)*

– Article 226 – Scope – Held – In exercise of power under Article 226, Court can merely consider the decision making process: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Article 226 – Scope & Interference – Judicial Review – Held – Writ petition filed at the initial stage of investigation – This Court has earlier also denied to interfere in matter of search and seizure by way of judicial review: *Kanishka Matta (Smt.) Vs. Union of India, I.L.R. (2020) M.P. 2116 (DB)*

– Article 226 – Scope & Jurisdiction – Disputed Question of Facts – Held – Disputed question of facts cannot be decided by this Court while exercising the power under Article 226 of Constitution: *Ekkisvi Sadi Grah Nirman Sehkari Samiti Vs. State of M.P., I.L.R. (2020) M.P. *17*

– Article 226 – Scope & Jurisdiction – Held – Court cannot supervise the investigation: *Vidhya Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1552*

– Article 226 – Scope & Jurisdiction – Held – If the screening committee constituted for such purpose finds the petitioner unfit for appointment due to prosecution in criminal case, then this Court in writ jurisdiction cannot act as an appellate authority and interfere in such a decision, unless same is found to be palpably erroneous or de hors the rules, regulations or settled law: *Pawan Vs. State of M.P., I.L.R. (2019) M.P. 8*

– Article 226 – Scope & Jurisdiction – Term "Any Other Purpose" – Held – High Court as Superior Court while exercising writ jurisdiction under Article 226 has powers to issue writ, order or any direction which are either directly or indirectly related to subject matter – Expression "any other purpose" expands jurisdiction to reach all those places or causes where injustice is found and do everything possible within its power to remedy the same – Powers of issuing direction can be exercised not only by curative but also by punitive means, as the case may be, without stepping into shoes of disciplinary authority: *JMFC Jaura, Distt. Morena Vs. Shyam Singh, I.L.R. (2020) M.P. 1273 (DB)*

– Article 226 – Scope, Jurisdiction and Powers – Held – High Court under Article 226 has power to issue any direction/order/writ to any person or authority including any Government within territory of the Court for enforcement of any rights conferred by Part III of Constitution and/or any other purpose – Writ jurisdiction can be exercised to protect fundamental rights of member of Bar to appear in Court and also fundamental rights of citizens of State to get their cases decided with assistance of Advocates engaged by them: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2401 (DB)*

– Article 226 – Show Cause Notice – Validity – Held – Apex Court has concluded that if show cause notice is found to be wholly without jurisdiction or otherwise wholly illegal, Court can interfere into the matter under Article 226 of Constitution: *Rakesh Soni Vs. State of M.P., I.L.R. (2020) M.P. 126*

– Article 226 – Temple of Private Trust – Manager – On the strength of a circular of State Government, name of Collector was recorded as manager of private trust property in the revenue records/khasra entries – Challenge to – Held – It is a settled principle of law that on the basis of executive instructions passed by Government, proprietary rights cannot be brought to an end and the right of ownership which may be less than absolute ownership can only be brought to an end by due procedure of law and such law has not been shown in the present case – Action of respondent entering the name of Collector as Manager in revenue records is hereby declared illegal and directed to be deleted from revenue record – Further held – In respect of land attached to temple, no third party right shall be created by alienating or transferring the land in any manner by persons managing the land on behalf of temple – Petition disposed of: *Ranumal Sharma @ Ranu Vs. State of M.P., I.L.R. (2017) M.P. 1371*

– Article 226 and Electricity Act (36 of 2003), Section 126 – Review – Error Apparent on Face of Record – Held – Non consideration of binding decision of superior Court, hearing of matter by Division Bench which was required to be heard by Single Bench, entertaining a petition challenging the same orders for which an earlier petition has already been decided; for levy of penalty u/S 126 of Act, applying principle of mens rea and giving directions contrary to statutory provisions are the errors apparent on face of record – Case of review made out – Order passed in writ petition reviewed and recalled, whereby petition is dismissed: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

– Article 226 and General Clauses Act (10 of 1897), Section 21 – Order of Approval – Effect – Held – Commissioner has merely kept his approval order in abeyance – Commissioner is well within jurisdiction to reconsider his order of approval – No final decision taken as to whether approval is to be recalled or not – Petition being premature is dismissed: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Article 226 and Service Law – Transfer – Scope & Jurisdiction – Held – Apex Court concluded that transfer is part of service conditions of employee which should not be interfered with ordinarily by Court of law in exercise of jurisdiction under Article 226 unless Court finds such transfer to be malafide or against Service Rules or has been passed without authority: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

– Article 226 – The jurisdiction is extraordinary, equitable and discretionary and it is imperative – The petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief: *Modern Dental College & Research Centre Indore Vs. Government of India, I.L.R. (2016) M.P. 3007 (DB)*

– Article 226 – Unaided Private Institution – Scope and Jurisdiction – Maintainability of Petition – Held – Supreme Court urged that respondent Institutions are imparting education to students at large and are exercising public functions and thus amenable to writ jurisdiction – Writ Petition is maintainable: *Pushkar Gupta (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *99*

– Article 226 – Whether fresh investigation through independent agency like C.B.I. can be ordered without consent of the State – Held –Yes, in an exceptional situation it can be ordered: *Mithlesh Rai Vs. State of M.P., I.L.R. (2016) M.P. 667 (DB)*

– Article 226 – Whether investigation of a criminal case by State Agency is open to judicial review in the writ jurisdiction – Held – Yes, if rights as enshrined under the Constitution are violated by the authorities: *Mithlesh Rai Vs. State of M.P., I.L.R. (2016) M.P. 667 (DB)*

20. Jurisdiction of CBI

– Article 226 – Public Servant – Jurisdiction of CBI – Held – As R-8, an employee of a registered society, which is under control of Central Government, he is certainly a central government employee and a public servant – Further, CBI itself concluded that appointment was obtained by R-8 by furnishing false information and role of the officials was to be enquired, then certainly, offence under the Prevention of Corruption Act is made out – CBI has jurisdiction to investigate the case – CBI directed to restart investigation: *Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

21. Locus Standi

– Article 226 – Writ Jurisdiction – Locus – Held – Merely because a person have a locus standi to file writ petition, does not mean that he is entitled to any equitable or legal relief in writ jurisdiction: *Munawwar Ali Vs. Union of India, I.L.R. (2018) M.P. 449 (DB)*

– Article 226 – Writ of "Quo Warranto" – Locus Standi – Held – Writ of *Quo Warranto* can be maintained by any citizen of the Country, therefore concept of *locus standi* has no application to the writ of *Quo Warranto: Manoj Pratap Singh Yadav Vs. Union of India, I.L.R. (2020) M.P. 795*

– Article 226 – Writ of Quo-Warranto – Maintainability of Petition – Locus Standi – Petitioner is an employee of Municipal Council working as sub-engineer – Respondent No. 5 who was Assistant Grade III was arrested for offence u/S 302 IPC and was subsequently suspended – In appeal, his sentence was stayed and on this basis, suspension of respondent no.5 was revoked and he was reinstated – Petitioner filed this petition – Challenge to maintainability – Held – Writ of quo-warranto is available in case when a person is holding the post contrary to the statute – Petition filed by the present petitioner is maintainable: *Raju Ganesh Kamle Vs. State of M.P., I.L.R. (2018) M.P. 64*

22. Police Encounter

– Article 226 – Death in the police encounter – Non-registration of the First Information Report – Seeking a direction to register case against the Police Officers – In the matter of death in a police encounter, the appropriate step is to prefer a written application to the Sessions Judge within whose territorial jurisdiction the incident in question took place, regarding abuse or lack of independent investigation or impartiality shown by any of the functionaries of the State involved in investigating process: *Kusma Rathore (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3265*

23. Power of Revenue Authorities

– Article 226 – Power of Sub Divisional Officer – Jan Sunwai – Petition against the order passed by Sub Divisional Officer whereby issue of title and possession was decided and subsequently eviction order has been passed – In appeal, Collector dismissed the same on the ground that order has not been passed under the provisions of MP Land Revenue Code and hence appeal not maintainable – Held – Jan Sunwai is certainly not a court as per any statute – Nowadays, it has become a trend that Revenue Authorities, District Magistrate, Sub Divisional Officer are deciding the title disputes and if such kind of procedure is permitted to continue, the Civil Procedure Code shall come to end and these authorities shall be deciding all the suit and injunction matters – Such a procedure in democratic set up cannot be permitted – Majesty of law has to be protected – Practice of kangaroo courts and Kangaroo justice is against the rule of law and deserves to be deprecated – Impugned orders quashed – Authorities directed to place the petitioner in possession – Cost of Rs. 25000 imposed – Petition disposed: *Sumer Singh Vs. Resham Bai, I.L.R. (2018) M.P. *28*

24. Principle of Natural Justice

– Article 226 – Administrative Decision – Principle of Natural Justice – Held – Apex Court concluded that even administrative decisions entailing civil

consequences are subject to principles of natural justice: *Global Tradex Ltd. (Formerly Known as Namco Corp Ltd.) Vs. State Bank of India, I.L.R. (2019) M.P. 1998*

– Article 226 – Opportunity of Hearing – Principle of Natural Justice – Held – Classification of account of petitioner as fraud is carrying serious civil as well as criminal consequences and attracts grave punitive measures therefore Bank should have issued prior notice to petitioner, providing opportunity of hearing, before classifying the account of petitioner as fraud – Earlier notice issued was regarding issue of 'willful defaulter' and not for classifying the account as 'fraud' – Impugned order quashed – Petition allowed: *Global Tradex Ltd. (Formerly Known as Namco Corp Ltd.) Vs. State Bank of India, I.L.R. (2019) M.P. 1998*

– Article 226 – Principle of Natural Justice – Show Cause Notice – Petition against the performance appraisal report and proposal to take action against the petitioner which has been forwarded to the competent authorities – Authority is yet to take any cognizance of it or act upon it or take a decision – Question of issuance of any notice to the petitioner by the authority forwarding the performance appraisal/ proposal does not arise – Petition dismissed: *Pinki Mishra (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 1950*

– Article 226 – Proctorial Board – Maintenance of Discipline Amongst Students of University Teaching Department, Ordinance No. 15, Clause 4, 11 & 12 – Rustication Order – Show Cause Notice – Natural Justice – Opportunity of Hearing – On numerous complaints made by different students regarding misbehavior, mental and physical torture by petitioners, rustication orders of the petitioners were passed by Proctorial Board – Held – As per the provisions of Ordinance 15, Proctorial Board is empowered to enquire into acts of indiscipline and to impose fine and/or other punishment which includes recommendation for rustication or expulsion of student – In the present case, no show cause notice in writing was given to petitioners specifying charges/complaint against them, thereby disabling them from effectively defending themselves – Principles of natural justice appears to have been violated – Principle of natural justice of *audi alterem partem* is binding not only on judicial but also on executive authorities – Reasonable opportunity of being heard should be afforded to persons before they are condemned/punished – Order of rustication is set aside and University is directed to follow the process contained in Ordinance 15 especially clause 11 and 12 before proceeding against petitioners – University is free to take suitable action against petitioners in accordance with law: *Shivvam Awasthi Vs. Vice Chancellor Jiwaji University, I.L.R. (2017) M.P. 1641 (DB)*

– Article 226 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (14 of 2013), Sections 2(n), 3(2) & 13 – Principle of Natural Justice – Held – Despite three opportunities, Medical Superintendent did not

turn up to record his statement and did not co-operate in the enquiry – Neither sought permission for cross examination of complainant at any point of time – Complaint of violation of natural justice at instance of hospital or Medical Superintendent cannot be entertained: *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Article 226 & 14 – Principles of Natural Justice – Issue involved – Whether the derogatory remarks made against a subordinate officer and directions to initiate police action against him while setting aside the order made by him in a quasi-judicial proceeding is sustainable without affording him an opportunity of hearing – Held – No – Such remarks were uncalled for since it causes serious prejudice to the petitioner – However, the Court, without expressing any opinion on the merits of the order, further held that this will not foreclose the right of the disciplinary authority to proceed with without being influenced from such derogatory remarks: *R.N.S. Sikarwar Vs. State of M.P., I.L.R. (2016) M.P. *20*

25. Promotion

– Article 226 – Promotion – Petitioner placed at Sr.No. 2 in waiting list – The candidates whose names are included in the waiting list are not entitled to be appointed against unfilled posts as of right – The waiting list has not been acted upon by the respondent authorities and in such circumstances even if the person whose name appears at Sr.No. 2 of the selection list had not joined and his post was vacant, the same could have been filled up by authorities by considering the name of the candidate who was at Sr.No. 1 and not by the name of the candidate who was below him in the waiting list – Petition dismissed: *Geeta Singh Sisodiya (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 1943*

26. Public Interest Litigation

– Article 226 – Duty of Court – Held – Must examine the case to ensure genuine public interest – Strict vigilance to ensure no abuse of process – Court should make an earnest endeavour to take up those cases, where the subjective purpose to the lis justifies the need of it: *Mukesh Dandeer Vs. State of M.P., I.L.R. (2016) M.P. 761 (DB)*

– Article 226 – Public Interest Litigation – Bonafide of the petitioner – Stranger cannot be permitted to meddle in any proceedings unless he is aggrieved person – Writ petition maintainable for judicial enforceable legal right – Existing of such right is condition precedent for invoking writ jurisdiction – To exercise such extraordinary jurisdiction, relief prayed must be to enforce such legal right which is foundation of said jurisdiction – Person aggrieved does not include who suffers

psychological or imaginary injury – Person aggrieved must be whose right or interest adversely affected: *Mukesh Dandeer Vs. State of M.P., I.L.R. (2016) M.P. 761 (DB)*

– Article 226 – Public Interest Litigation – Directions for eradicating Congress Grass, Carrot Root, Star Weed from urban rural area – Said plants deemed to be potentially dangerous to the health of the human – Directions issued to authorities to take effective steps to eradicate congress grass, carrot root, star weed – Petitioner raised a genuine public cause with no personal interest – It would be appropriate that petitioner should be awarded cost of the litigation: *Rakhee Sharma (Dr.) (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 1280 (DB)*

– Article 226 – PIL – Entrance examination by APDMC – Future examination – Obtaining of finger prints at the time of enrollment – Verification of finger prints & photos to be done at the time of entry in the Examination Hall, during counseling and at the time of admission: *Paras Saklecha Vs. State of M.P., I.L.R. (2016) M.P. 464 (DB)*

– Article 226 – Public Interest Litigation – Eradication of Vector Borne Diseases – Petition alleging laxity on part of State Authorities/Municipal Corporation in clearing the debris and covering of marshy lands hatches, causing dengue, malaria, swine flu, chikungunya etc. – Held – Fighting with vector borne diseases and plugging such source/breeding ground for vectors is an ongoing continuous process, in which both the residents of city and State authorities/Municipal Corporation have an important unending task to be performed – Directions issued: *Awdhesh Singh Bhadauria Vs. State of M.P., I.L.R. (2019) M.P. 2009 (DB)*

– Article 226 – Public Interest Litigation – Government of M.P., publishes text books for schools run by the State Government – Photo of the Chief Minister and good works should be published in every book, so that message would reach to every child of the State – Held – Holder of a constitutional post, who is responsible for over all development of the State, the Chief Minister is well within his right to convey his expectations and thoughts to young generation of the State – No prima facie case for admitting the petition – Petition dismissed: *Tapan Bhattacharya (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *63 (DB)*

– Article 226 – Public Interest Litigation – Illegal Constructions – Enquiry – Held – Illegal Construction (Hotel) by obtaining loan from nationalized banks, is wastage of public money – Economic Offence Wing directed to probe the matter: *Sanjay Gangrade Vs. State of M.P., I.L.R. (2019) M.P. 1227 (DB)*

– Article 226 – Public Interest Litigation – Jurisdiction & Scope of Interference – Held – Jurisdiction of PIL should be invoked very sparingly and in favour of vigilant litigant and not for persons who invoke this jurisdiction for sake of

publicity – Further held – Constitution does not recognize or permit mixing of religion and State power and the two must be kept apart: *Tapan Bhattacharya (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1649 (DB)*

– Article 226 – Public Interest Litigation – Locus Standi – Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extra ordinary jurisdiction – A person acting *bonafide* and having sufficient interest in the proceedings of PIL will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions but not for personal gain or private profit or political motive or any oblique consideration – Petition dismissed: *Rajendra K. Gupta Vs. Shri Shivrajsingh Chouhan, Chief Minister of M.P., I.L.R. (2016) M.P. 3276 (DB)*

– Article 226 – Public Interest Litigation – Locus Standi – Held – A person acting bonafide and having sufficient interest in proceedings of Public Interest litigation will only have *locus standi*, who can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions – It cannot be invoked for personal gain or personal causes or private profit or political motive or to satisfy personal grudge and enmity or any oblique considerations: *Tapan Bhattacharya (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1649 (DB)*

– Article 226 – Public Interest Litigation – Swachh Survekshan, 2019 – Locus & Maintainability – Held – Municipal Corporation, being a beneficiary of a higher ranking in terms of better recognition and higher grants, the petition by its employee cannot be a genuine PIL and thus cannot be accepted – It cannot be said that petitioner has no vested interest – On ground of locus and involvement of disputed facts, petition fails and is dismissed: *Sandeep Sharma Vs. Union of India, I.L.R. (2019) M.P. 2513 (DB)*

– Article 226 – Public Interest Litigation – Swachh Survekshan, 2019 – Scope & Jurisdiction – Held – Rankings decided on four parameters, namely service level progress, certification, direct observation & citizen feedback – Any perceived difference of such rankings and granting of marks cannot be a matter of dispute in a writ petition – Writ Court, in its summary jurisdiction is not equipped to deal with so many parameters, their perceived data and actual feedback: *Sandeep Sharma Vs. Union of India, I.L.R. (2019) M.P. 2513 (DB)*

– Article 226 – Public Interest Litigation – To stay process of issuance of e-Challans with help of Closed Circuits, Television Footage by Road Transport Officer – PIL must be real and genuine and not merely an adventure of knight errant borne out of wishful thinking – In present petition, petitioner has without any material, impleaded number of persons by their name for publicity purpose only, therefore,

petition dismissed with cost of Rs. 10,000: *Rajendra K. Gupta Vs. Shri Shivrajsingh Chouhan, Chief Minister of M.P., I.L.R. (2016) M.P. 3276 (DB)*

– Article 226 – Writ of certiorari – In Public interest litigation, it cannot be allowed to affect contractual agreement itself which reduces a legal document in worthless piece of paper – If permitted, it is bound to lead to a chaotic situation affecting the fabric of law – No reason to interfere in the impugned order – Petition dismissed: *Mukesh Dandeer Vs. State of M.P., I.L.R. (2016) M.P. 761 (DB)*

– Article 226 – Writ of Quo Warranto – Locus Standi – Public Interest Litigation – Administrator of Municipal Council replaced by Administrative Committee of 5 persons – Petitioner challenging the same on speculative ground that he is interested in contesting forthcoming elections and such appointment of private persons would adversely affect him – Held – As on date, no right has matured in favour of petitioner – No locus standi to sustain present petition as a regular writ petition by an aggrieved person before single bench – Writ of Quo Warranto though maintainable by one who is not an aggrieved person, same can only be maintained by way of PIL before Division Bench – Liberty granted to prefer a PIL, if desired – Petition dismissed: *Santosh Pal Vs. State of M.P., I.L.R. (2019) M.P. 1062*

– Article 226 and Municipal Corporation Act, M.P. (23 of 1956), Sections 293, 294 & 296 – Public Interest Litigation – Illegal Constructions – Departmental Permissions – Legality – Held – Respondents raised construction when there was no development permission from department of T & CP – Building permission has also been revoked by Municipal Corporation – Diversion order for land use for commercial purpose also cancelled – Entire construction of Hotel on residential plot is an illegal construction – State authorities, granting permission de hors statutory provisions – Development permission, building permission and diversion order are quashed – Municipal Corporation shall proceed for removal of entire illegal construction – Petition allowed: *Sanjay Gangrade Vs. State of M.P., I.L.R. (2019) M.P. 1227 (DB)*

– Article 226 and Plastic Waste Management Rules, 2016 – PIL – Ban on Production, Transport, Storage, Sale & Use of Plastic Carry Bags/Polythene – Held – Banning of polythene/plastic bags has to be considered as a most significant moment of life – If any material which is generally used is not biodegradable then whole ecosystem will be affected and indirectly will affect all living organisms of world – Directions issued to Citizens/authorities/Print Media: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

27. Removal/Dismissal

– Article 226 – Removal from service – Respondent No. 6 was removed from service against which she had filed revision – Meanwhile, the petitioner was

appointed in place of Respondent No. 6 – Commissioner allowed the revision filed by the Respondent No. 6 and directed for her re-instatement – Order of removal of petitioner consequent to re-instatement of Respondent No. 6 is not bad in law, as the order of Competent Authority cannot be rendered otiose and mere waste of paper: *Pinki (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. *32*

28. Repayment of Loan/Recovery

– Article 226 – Petition for release of Excavator Machine on 'Supardgi' & for registering criminal case against Respondents – Vehicle financed for loan amount of Rs. 36,60,000/- – Repayment Rs. 1,38,550/- per month in 33 EMI – Grave default in repayment – Show cause notice – No reply – Extended opportunity for repayment – Seizure of Excavator Machine – Police complaints by petitioner – No ground to proceed – Held – As per the loan agreement and opportunity of repayment granted to the petitioner, he is not entitled for any relief – Petition sans merit & is dismissed: *Seven Brothers (M/s.) Vs. Hinduja Leyland Finance Co., I.L.R. (2016) M.P. 2469*

– Article 226 – Recovery of excess payment – Petitioner retired as Ranger – Respondents directed for recovery of Rs. 24,116/- including interest – Held – State Government unable to establish any role of petitioner in fixation of pay and unless established that damage is caused, petitioner not subjected to pay interest – Liability to refund the excess amount upheld – Charging of compound interest quashed – Petition partially allowed: *Beer Bhan Singh Vs. State of M.P., I.L.R. (2016) M.P. 402*

– Article 226 and Civil Procedure Code (5 of 1908), Section 60 – Re-payment of Loan – Attachment of Pension Account – Pension account of petitioner attached by Bank for repayment of loan – Held – Petitioner and his family members cheated various banks and obtained loan by playing fraud and has not repaid the loan amount – He who seeks equity must do equity – Conduct of petitioner disentitles him for equitable relief under Article 226 of Constitution – Petition dismissed: *Nirmal Singh Vs. State Bank of India, I.L.R. (2020) M.P. *11*

29. Scholarship

– Article 226 – Private Educational Institution – Post Matric Scholarship – Scheduled Caste and Scheduled Tribe Students – Held – Students belonging to Scheduled Caste and Scheduled Tribes category are entitled to scholarship only to extent decided by State which in the instant case is the fee charged for a similar course in government colleges and nothing more – Fee charged by an educational institution and grant of post matric scholarship by State are two separate and distinct issues and have no co-relation between them – Petition dismissed: *Adharsh Girls College Vs. State of M.P., I.L.R. (2017) M.P. *151 (DB)*

30. Subsidy

– Article 226 – Scheme for Technology Upgradation/ Establishment/ Modernization, Expansion of Food Processing Industries – Seeking a direction to the bank to release the amount sanctioned as subsidy under the scheme framed by the Ministry of Food Processing Industries, Government of India alongwith interest on the aforesaid amount – Held – The respondent has received the application of the petitioner under the scheme and has duly scrutinized the same and recommended the case of the petitioner for grant of subsidy under the scheme – The bank branches are responsible for processing of the application – The petitioner has complied with all the formalities prescribed under the scheme and the scheme does not provide that if the application is not uploaded on the "e" portal, the applicant would not be entitled to grant of subsidy under the scheme – Therefore, it is appropriate to direct the respondent to process the claim of the petitioner under the scheme: *GDP Agro and Food Products Pvt. Ltd. (M/s.) Vs. Union of India, I.L.R. (2017) M.P. 313 (DB)*

31. Suppression of Material Fact

– Article 226 – Suppression of Material Facts – Effect – Petitioner suppressed the fact that a civil suit in respect of the same issue is pending before the trial Court – Conjoint reading of writ petition and civil suit shows direct nexus between both the matter – Factual background of both matters are similar – Action of petitioner is deprecated – Serious disputed question of facts are involved in relation to formation of partnership firm, which cannot be decided in this writ petition – Petitioner free to establish his rights in pending civil suit: *Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd., I.L.R. (2017) M.P. 2645*

– Article 226 – Writ Petition – Suppression of facts – Suppression of facts would amount to abuse of process of law and a party guilty of such suppression of material facts is not entitled to grant of any relief in such writ petition, which is based on suppression of material facts – Petition dismissed: *Pratibha Kushram (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 427*

– Article 226 – Writ Petition – Suppression of Material Facts – Practice – Held – Apex Court concluded that a litigant must approach the Court with clean hands, clean mind, clean heart and clean objective – In cases of suppression of material facts, litigant is not entitled to be heard on merits: *Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd., I.L.R. (2017) M.P. 2645*

32. Termination of Dealership

– Article 226 – Dealership – Termination – Rules & Guidelines – Held – Action of termination would be justified when authority concerned acts fairly and in

complete adherence to Rules and Guidelines framed for the purpose – For testing of samples, it was the bounden duty of respondents to issue notice to petitioner and afford opportunity to remain present at time of testing and wait for reply of show cause notice before coming to conclusion: *Maa Kasturi Bai Filling Station (M/s.) Vs. Indian Oil Corporation, I.L.R. (2018) M.P. 2831*

– Article 226 – Dealership – Termination – Show Cause Notice – Principle of Natural Justice – Held – Lab test was carried out and report was prepared behind the back of petitioner – Perusal of show cause notice discloses the pre-determined mind of respondents to terminate the dealership even without waiting for reply – Principle of natural justice apparently violated – Impugned show cause notice is arbitrary and illegal as it discloses the mind of respondents, hence quashed – Petition allowed: *Maa Kasturi Bai Filling Station (M/s.) Vs. Indian Oil Corporation, I.L.R. (2018) M.P. 2831*

– Article 226 – L.P.G. Distributorship – Cancellation of Candidature – Grounds – Natural Justice – Petitioner was found eligible for the distributorship of LPG retail outlet – Indian Oil Corporation cancelled his candidature on the ground that the land for godown offered by petitioner is not connected with approach road and gift deed for approach road was registered after the date of submitting application form – I.O.C. issued letter of intent to R-2 – Challenge to – Held – After selection of petitioner, field verification was carried out and on the basis of verification report which mentioned absence of connecting motorable approach road, candidature was cancelled – Looking to the procedure, such condition is directory and not mandatory effecting the eligibility of petitioner – On the date of verification, petitioner could have been asked to give undertaking to make the road motorable within time specified – Without giving such option to petitioner, action of IOC cancelling his candidature is unfair, non-judicious, partial and arbitrary and is not based on principle of natural justice – Moreso, letter of intent issued to respondent no.2 inspite of the fact that as per search and title report of land, the title and possession of respondent no. 2 was not clear and was under litigation – Order of cancellation of candidature of petitioner and order issuing letter of intent to respondent no.2 are quashed – Petition allowed: *Reeta Singh (Smt.) Vs. Indian Oil Corporation Ltd., I.L.R. (2017) M.P. 1656*

– Article 226 – LPG Distributorship – Advertisement for appointment of second dealer in same territory challenged – Agreement makes it very clear that the oil companies certainly have a right to appoint one or more Distributors in the same territory – Not only this the oil company is also having a liberty to extend or to reduce the area – Petition dismissed: *Santosh Vs. Union of India, I.L.R. (2016) M.P. 2183*

– Article 226 – Principle of Natural Justice – Opportunity of Hearing – Termination of Petrol Pump Dealership – In a surprise inspection from appellant

corporation, certain critical discrepancies were found in the petrol pump of respondent whereby following the due process, the dealership was terminated – Respondent filed a writ petition whereby the same was allowed and dealership was restored – Challenge to – Held – As per records, show cause notices were issued to respondents and he filed replies to the notices – Opportunity of personal hearing was also accorded where respondent appeared personally before the authority of appellant – In appeal also, personal hearing was provided by the Appellate Authority – In the writ petition, respondent made total false and misleading statement regarding violation of principle of natural justice and non grant of opportunity of hearing – Respondent did not approached the writ Court with clean hands – If there is willful concealment of facts by respondent, he is not entitle for any relief under Article 226 of the constitution – Order passed in Writ petition is set aside – Appeal allowed: *Indian Oil Corporation Ltd. Vs. M/s. Govind Saraf Kisan Seva Kendra, I.L.R. (2017) M.P. 1336 (DB)*

33. Territorial Jurisdiction

– Article 226 and High Court Rules and Orders, M.P., Chapter 3 – Territorial Jurisdiction – Cause of Action – Held – In order to ascertain the territorial jurisdiction, High Court shall scrutinize the doctrine of forum conveniens and the nature of the cause of action while entertaining a writ petition – Even a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have the jurisdiction in the matter – In the present case, petition was presented at Gwalior bench of High Court – All proceedings such as opening of technical bid, financial bid and issuance of work order has been carried out at NHDC office at Khandwa and their corporate office is at Bhopal and therefore territorial jurisdiction lies within the principal Seat of this Court at Jabalpur – Registry directed to return the petition to the counsel of petitioner for presentation before the Principal Seat at Jabalpur – Petition disposed: *Surendra Security Guard Services (M/s.) Vs. Union of India, I.L.R. (2018) M.P. 54 (DB)*

– Article 226 – Territorial Jurisdiction – Property situated at Raipur – Order under challenge is passed by D.R.T., Jabalpur – As part of cause of action arose within the jurisdiction of High Court of Madhya Pradesh, writ petition is maintainable: *Centauto Automotives Pvt. Ltd. (M/s.) Vs. Union Bank of India, I.L.R. (2016) M.P. 1693 (DB)*

– Article 226(2) – Territorial Jurisdiction – Held – As per Article 226(2) of Constitution, even if a part of cause of action has arisen within the territory of this Bench, petition is maintainable – Full Bench of this Court opined that cause of action would arise at a place where impugned order is made and also at a place where its consequence fall on person concerned – In present case, consequence of impugned order has fallen on petitioner at Sehore – Petition is maintainable: *Virendra Jatav Vs. State of M.P., I.L.R. (2020) M.P. 2104*

34. Writ of Mandamus

– Article 226 – Writ of Mandamus – Can be issued where the Government or a Public Authority has failed to exercise or wrongly exercised the discretion conferred upon it by a statute or rule or policy decision – In order to compel the parties of public duty, the Court may itself pass an order/direction: *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

– Article 226 – Writ of Mandamus – Scope – Held – It is settled law that after expiry of validity of select list, a mandamus for appointment on basis of such a select list cannot be issued: *Usha Damar (Ms.) Vs. State of M.P., I.L.R. (2019) M.P. 1069*

35. Miscellaneous

– Article 226 – See – Board of Secondary Education (Madhya Pradesh) Regulations, 1965, Regulation 119: *Sharinath Das Gupta Vs. Board of Secondary Education, I.L.R. (2018) M.P. 1420*

– Article 226 – See – Criminal Procedure Code, 1973, Section 24(8): *Dev Raj Kataria Vs. State of M.P., I.L.R. (2017) M.P. *153*

– Article 226 – See – Criminal Procedure Code, 1973, Section 482: *Anant Vijay Soni Vs. State of M.P., I.L.R. (2018) M.P. 203*

– Article 226 – See – Employees Provident Funds and Miscellaneous Provisions Act, 1952: *Om Prakash Vijayvargiya Vs. Employees Provident Fund Organization, I.L.R. (2020) M.P. *5*

– Article 226 – See – Income Tax Act, 1961, Sections 142(1), 147 & 148: *Etiam Emedia Ltd. (M/s.) Vs. Income Tax Officer-2 (2), I.L.R. (2019) M.P. *16 (DB)*

– Article 226 – See – Income Tax Act, 1961, Sections 143(1), 147 & 148: *Malay Shrivastava Vs. The Deputy Commissioner, Income Tax, I.L.R. (2017) M.P. 39 (DB)*

– Article 226 – See – Industrial Disputes Act, 1947, Section 16: *A.K. Khare Vs. Ms. Indian Drugs & Pharmaceuticals Ltd., Gurgaon, I.L.R. (2016) M.P. 1266*

– Article 226 – See – Land Revenue Code, M.P., 1959, Section 44: *Madan Vibhishan Nagargoje Vs. Shri Shailendre Singh Yadav, I.L.R. (2019) M.P. 1981 (DB)*

– Article 226 – See – National Security Act, 1980, Section 3(3): *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

– Article 226 – See – Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000, Section 4 & 8: *Pushp Vs. State of M.P., I.L.R. (2018) M.P. 702*

– Article 226 – See – Representation of the People Act, 1951, Sections 81, 100 & 101: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Article 226 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & (s): *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Article 226 – See – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 2(O), 4B, 13(2), 13(4) & 17: *Samrath Infrabuild (I) Pvt. Ltd., Indore Vs. Bank of India, I.L.R. (2016) M.P. 2654 (DB)*

– Article 226 – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 13(4) & 17: *Century 21 Town Planners Pvt. Ltd. Vs. J.M. Finance Assets Reconstruction Co., I.L.R. (2018) M.P. 2382 (DB)*

– Article 226 – See – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 2(n) & 3(2): *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Article 226 – See – Supreme Court Judges (Salary and Conditions of Service) Act, 1958, Section 16B: *Justice Shambhu Singh (Rtd.) Vs. Union of India, I.L.R. (2020) M.P. 2804 (DB)*

SYNOPSIS : Article 226 & 227

1. Alternate Remedy

– Article 226/227 – Alternative Remedy – Where violation of principles of natural justice is established, it is not compulsory to relegate the petitioner to avail the alternative remedy – If the petition is entertained and during the pendency of petition,

limitation for alternative remedy expires, then the petition should be heard on merits and parties should not be relegated to avail the remedy under the statute: *Kaushlendra Singh Jatav Vs. Union of India, I.L.R. (2017) M.P. 321*

– **Article 226/227** and Electricity Act (36 of 2003), Section 111 – Appeal – Writ petition against order of MPERC – Preliminary objection – Whether writ petition under Article 226/227 of the Constitution against the order of Regulatory Commission is maintainable or not – Held – As the constitutional validity of a Regulation is not questioned and alternate statutory remedy of appeal before Appellate Tribunal u/S 111 of 2003 Act lies against the order of Commission, so writ petition under Article 226/227 of the Constitution is not maintainable – Writ petition dismissed with liberty to avail efficacious statutory remedy of appeal u/S 111 of 2003 Act: *Jaiprakash Associates Ltd. Vs. Madhya Pradesh Electricity Regulatory Commission, I.L.R. (2017) M.P. 61*

2. Award of Lok Adalat

– **Article 226/227** and Legal Services Authorities Act, (39 of 1987), Section 21 – Award of Lok Adalat – Prohibition of Appeal – Writ Petition – Maintainability – Held – Section 21 prohibits appeal against the award of Lok Adalat – Remedy of writ under Article 226 and 227 is available to those persons who were parties to the settlement and if any party wants to challenge such award based on settlement that too on very limited grounds: *Jahar Singh Lodhi Vs. Ramkali, I.L.R. (2017) M.P. 1462*

3. Election

– **Article 226/227** – Election Petition – Reasoned/Speaking Order – Natural Justice – Petition against dismissal of application filed by petitioner in an Election Petition under Order 14 Rule 2 CPC – Held – Application has been dismissed by the SDO without assigning any reason and conclusion arrived at – In the earlier round of litigation while dealing with the same issue, this Court specifically directed to pass a reasoned order and remanded back the matter, even then the SDO (same person) repeatedly passed the same order, without any alphabetical alteration even, which is arbitrary, illegal and reflects casualness, negligence and/or defiance and is in the nature of disobedience to the orders passed by this Court – It is against the fair play and transparency which is a part of the principle of natural justice – Administrative authorities are duty bound to assign reasons while deciding the case either functioning as quasi judicial authority or as administrative authority – They must record reasons for arriving to a conclusion so that it facilitates the process of judicial review by superior Court or authority – Directions given by this Court are to be complied with by the authorities especially when the order of this Court attains finality – Impugned

order set aside – Matter remanded back to authority for decision of application afresh – Further, Principal Secretary, Government of MP is directed to hold enquiry against the SDO regarding such casualness and negligence – Petition allowed: *Tarabai (Smt.) Vs. Smt. Shanti Bai, I.L.R. (2018) M.P. 390*

– Article 226/227 – Scope of Jurisdiction of High Court in Election Matters, where the Authority has acted in excess of its' jurisdiction – Respondent No. 5 filed a complaint hurling serious allegations against Returning Officer including rejection and scrutiny of nominations and declaration of results under political pressure – The Collector conducted an enquiry and submitted the enquiry report before the Authority, and the Authority has stayed election – Held – The Authority has acted in excess of its' jurisdiction – The report submitted on a complaint of third person without notice to the Returning Officer and without verifying the record, could not form basis to justify stay of election by the Authority and thereby, restraining the elected office bearers to function – Writ Petition allowed – However, the Court declined to interfere into merits and demerits of factual disputes, as there being several allegations and counter-allegations: *Nathuram Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3253*

4. Scope & Jurisdiction

– Article 226 & 227 – Difference in Jurisdiction & Power – Explained & Discussed: *Mahesh Kumar Jha Vs. Union of India, I.L.R. (2020) M.P. 342 (DB)*

– Article 226 & 227 – Jurisdiction of Court – Held – Jurisdiction of this Court under Article 226 and 227 of Constitution in such matters is required to be exercised with care, caution and circumspection, as this Court cannot sit in appeal over the judgment of disciplinary authority: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1086*

– Articles 226 & 227 – Petitioner challenging the order of penalty imposed – Rs. 4,00,000/- under Section 69 of Commercial Tax Act, 1994 and Rs. 1,25,000/- under Section 13 of Entry Tax Act, M.P. (52 of 1976) – Held – Sections 14 & 27(8) are not applicable in penalty proceedings – Delay of 11 months in serving the order of penalty to petitioner, it shall be presumed that order is ante-dated – Penalty proceedings not completed within one year – Penalty imposed set aside – Petition allowed: *Sadguru Fabricators & Engineers P. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2199 (DB)*

– Article 226 & 227 – Practice – Order Attaining Finality – Effect – Held – Once an order has been passed by Competent Authority, even if it is erroneous in nature, if same has attained finality as no higher Court or authority has overruled the same, it would be binding on parties – Tribunal quashed the notices issued by respondents, they should not have circumvented the Tribunal's order by issuing a

separate notice/order of same nature which were already quashed – Impugned order/ notice quashed – Petition allowed: *Ratnakar Chaturvedi Vs. State of M.P., I.L.R. (2019) M.P. 1671*

– Article 226/227 – Appointment – Judicial Review – Scope – Held – Any arbitrary decision taken by Selection Committee actuated by malafide, can very well be interfered by Constitutional Courts in exercise of judicial review jurisdiction: *Anil Bhardwaj Vs. The Hon'ble High Court of M.P., I.L.R. (2020) M.P. 2735 (SC)*

– Article 226/227 – Appointment – Judicial Review – Scope & Grounds – Held – An order of appointment is subject to judicial review on ground of illegality, non application of mind and malafide – If suitability of candidate has not been found to be proper by assessing authority and reasons have been assigned for the same, that cannot be a ground for judicial review: *Asha Kushwah (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *3 (DB)*

– Article 226/227 – Judicial Review – Scope – Held – This Court cannot sit as Appellate Authority to re-appreciate evidence – Scope of judicial review is limited in such cases: *Satyaprakashi Parsedia (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2722*

– Article 226/227 – Judicial Review – Scope – Held – Even if two views are possible, it was not open for the High Court under the limited scope of judicial review under Article 226/227 to interfere the finding of the Tribunal which was recorded/based on oral and documentary evidence and was not perverse: *Director Steel Authority of India Ltd. Vs. Ispat Khadan Janta Mazdoor Union, I.L.R. (2019) M.P. 2192 (SC)*

– Article 226/227 – Scope & Jurisdiction – Held – Courts normally do not interfere with the State policy particularly in financial matter unless fraud or lack of bonafides is alleged and established: *Akshay N. Patel (Mr.) Vs. Reserve Bank of India, I.L.R. (2020) M.P. 2768 (DB)*

– Article 226/227 – Scope & Jurisdiction – Interference – Ground – Held – Normally transfer orders should not be required to be interfered by this Court but impugned order was passed contrary to statutory provisions with a malafide intention which requires interference by this Court: *Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank, I.L.R. (2019) M.P. 379*

– Article 226/227 – Maintainability – Held – Resolution passed by Society for authorization to file a writ petition but there is no mention of the fact that members of society would be bound by the judgment – Petition not maintainable because of incomplete resolution: *Kisan Sewa Sangh Vs. State of M.P., I.L.R. (2020) M.P. *1*

– Article 226/227 – Transfer Matter – Practice – Scope – Held – Transfer is an incident of service and same cannot be interfered unless transfer order is issued in violation of statutory rule or suffers from malafide exercise of power – Court cannot sit as an appellate authority in administrative matter like transfer of employee: *M.P. Power Transmission Co. Ltd. Vs. Yogendra Singh Chahar, I.L.R. (2018) M.P. 2099 (DB)*

– Article 226 & 227 and Electricity Act (36 of 2003), Section 126(6) – Scope & Jurisdiction – Held – Jurisdiction of High Court under Article 226/227 cannot be invoked to direct statutory authorities to act contrary to law – As per Section 126(6), assessment has to be made at a rate equal to twice the tariff applicable – Direction of Court is contrary to Section 126(6) of the Act, which is not permissible in law: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

5. Suspension

– Article 226/227 – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39 – Suspension of Sarpanch – Ground – Sarpanch was suspended on production of challan in a criminal case – Challenge to – Held – As per Section 39 of the Adhiniyam of 1993, suspension of an office bearer can be passed after framing of charge in criminal cases – In criminal trial, stage of filing of challan is different than the stage of framing charge – Charge is framed after application of mind by the Court of law - In the present case, when suspension order was passed, on that date, no charge was framed in the criminal case against the petitioner – Order of suspension is contrary to Section 39 of the Adhiniyam – Impugned order quashed – Petition allowed: *Choti Patel (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *89*

6. Tender/Contract

– Article 226/227 – Notice Inviting Tender – Terms & Conditions – Interference – Scope & Jurisdiction – Held – Looking to tender conditions, it cannot be said that they are tailor-made with *malafide* intention to avoid *bonafide* competition and to favour few individual – Government and their undertakings have free hand in setting terms of tender and unless same are wholly arbitrary, discriminatory, *malafide* or actuated by bias & malice, scope of interference by Courts does not arise – Petitioner failed to establish that, terms are contrary to public interest, discriminatory or unreasonable – Merely because conditions are not favourable to petitioner, they cannot be termed as arbitrary conditions – Petition dismissed: *Indermani Mineral (India) Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1093 (DB)*

– Article 226/227 – Notice Inviting Tender – Terms & Conditions – Judicial Review – Scope & Jurisdiction – Held – Apex Court concluded that if state and its

instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court is very restrictive since no person can claim fundamental right to carry on business with government – State can choose its own method to arrive at a decision – Invitation to tender are not open to judicial scrutiny and Court cannot whittle down the terms of tender as they are in realm of contract unless they are wholly arbitrary, discriminatory or actuated by malice – Mere power to choose cannot be termed arbitrary – Government must have a free hand in setting terms of contract: *Indermani Mineral (India) Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1093 (DB)*

– Article 226/227 – Writ Jurisdiction – Contractual Matters – Alternate Remedy – Held – Availability of alternate remedy is a rule of discretion – It does not bar exercise of writ jurisdiction of this Court in appropriate cases, moreso when there is no dispute about the question of fact, this Court can interfere in exercise of writ jurisdiction even in contractual matters: *Renew Clean Energy Pvt. Ltd. Vs. M.P. Power Management Company Ltd., I.L.R. (2017) M.P. 2384 (DB)*

– Article 226/227 – Writ Jurisdiction – Termination of Contract – Ground – Held – There is a delay of only 16 days in completing the first part of the agreement, for which there is a provision of penalty but action of termination of contract is not sustainable – Order of termination is set aside and action of invocation of bank guarantee as per agreement is maintained: *Renew Clean Energy Pvt. Ltd. Vs. M.P. Power Management Company Ltd., I.L.R. (2017) M.P. 2384 (DB)*

7. Territorial Jurisdiction

– Article 226 & 227 – Duty of Court while examining question as to Territorial Jurisdiction – While addressing on the question whether the High Court has jurisdiction to entertain Writ Petition, the Court is required to carefully peruse the averments made in the petition irrespective of the fact, truth or otherwise thereof – In other words, the Court must take into consideration all facts pleaded in the context of cause of action: *Pushpa Bai (Smt.) Vs. Board of Revenue, M.P., I.L.R. (2016) M.P. 3037*

– Article 226 & 227 – Territorial Jurisdiction – Facts involved – Main case originated from the orders of the Tehsildar, Nazul Jabalpur and that of SLR Jabalpur, and after travelling through appellate proceedings and culminated into rejection of revision by the Board of Revenue at Gwalior – Held – Since the genesis of the cause of action has arisen within the Revenue District of Jabalpur, falling within the territorial jurisdiction of Principal Bench, Writ Petition would be maintainable at Jabalpur and not at Gwalior Bench merely for the reason of rejection of revision by the Board of Revenue, Gwalior: *Pushpa Bai (Smt.) Vs. Board of Revenue, M.P., I.L.R. (2016) M.P. 3037*

– Article 226 & 227 – High Court Rules & Orders, M.P., Chapter III Rule 4 – Doctrine of Forum Conveniens – The Court is obliged to ensure convenience of all the parties before it, expenses involved, requirement of verification of facts, requisitioning of records, factors necessary for the just adjudication of the controversy and the Court may, while striking the balance of convenience, decline to exercise jurisdiction, though part of cause of action had arisen within the territorial jurisdiction of that court – Held – If a Bench, either sitting at the Principal Seat at Jabalpur or Bench at Gwalior or Indore, is of the opinion that the main case had arisen from the Revenue District falling within the territorial jurisdiction of some other Bench or the Principal Seat, it may record its reason and return the case for presentation at proper place: *Pushpa Bai (Smt.) Vs. Board of Revenue, M.P. , I.L.R. (2016) M.P. 3037*

8. Writ Appeal Against Interim Order

– Article 226/227 – Interim Order – Appeal – Maintainability – Held – Writ Appeal is maintainable against an interim order: *Prashant Shrivastava Vs. State of M.P., I.L.R. (2018) M.P. 2104 (DB)*

9. Miscellaneous

– Article 226/227 – See – Civil Procedure Code, 1908, Section 11: *Kisan Sewa Sangh Vs. State of M.P., I.L.R. (2020) M.P. *1*

– Article 226/227 – See – Indian Red Cross Society Branch Committee Rules, 2017, Schedule III, Clause 2(d): *Ashutosh Rasik Bihari Purohit Vs. The Indian Red Cross Society, I.L.R. (2019) M.P. 1693*

– Article 226/227 – See – Micro, Small and Medium Enterprises Development Act, 2006, Section 19: *Fives Stein India Project Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2020) M.P. 667 (DB)*

– Article 226/227 – See – Rajya Anusuchit Jati Aayog Adhiniyam, M.P., 1995, Section 10: *Vice Chancellor, Atal Bihari Vajpayee Hindi Viswavidyalaya, Bhopal Vs. M.P. Rajya Anusuchit Jati Aayog, I.L.R. (2019) M.P. 1824*

- **– Article 226 & 243-O** – Panchayat Nirvachan Niyam, M.P. 1995, Rule 28 – Panchayat Elections – Notification issued on 22.12.2014 – Nominations for second phase to be submitted from 31.12.2014 to 7.1.2015 – Date of polling fixed on 5.2.2015 for second phase – Relevant period in this petition is second phase for filing nominations – Impugned order is the Appellate order dated 18.12.2014 relating to final voter list – Held – As the election process has already started, no interference in the Writ Petition is warranted and remedy available to a party is to file an Election Petition after the election process is over by publication of the name of the returned candidate: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Article 226, 243-O & 329 and Panchayat (Up-sarpanch, President and Vice President) Nirvachan Niyam, M.P., 1995, Rule 3(6) – Reservation of the post of President, Janpad Panchayat for OBC (woman category) – Challenge – Impugned notification of reservation passed on 7.11.2014 – Election programme notified on 15.12.2014 – Writ Petition filed on 15.12.2014 – Whether Writ Petition is maintainable after commencement of election process – Held – No, as the election process has already started by issuance of election notification on 15.12.2014 and the Writ Petition has been filed on 15.12.2014, so no interference in the Writ Petition is warranted and remedy available to a party is to file an election petition u/S 122 of the M.P. Panchayat & Gram Swaraj Adhiniyam 1993 after the election process is over by publication of name of the returned candidate: *Prahlad Singh Raghuvanshi Vs. State of M.P., I.L.R. (2016) M.P. 2452*

– Article 226 & 243-ZG – See – Municipalities Act, M.P., 1961, Sections 20, 21, 22 & 47: *Geeta Suresh Chaudhary (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2929*

– Article 226 & 309 – See – Service Law: *Vikas Malik Vs. Union of India, I.L.R. (2019) M.P. 558*

SYNOPSIS : Article 227

1. Alternate Remedy

– Article 227 – Petition against ex-parte interim order of stay passed by the Industrial Court – Held – Petitioner having remedy to approach the tribunal and to file application therein – Petition dismissed: *J.B. Mangaram Mazdoor Sangh Vs. J.B. Mangaram Karamchari Union, I.L.R. (2016) M.P. 1958*

2. Consolidation of Suits

– Article 227 – Consolidation of Suits – Petition against rejection of application u/S 151 CPC filed by petitioner for consolidation of suits – Held – Evidence recorded in one civil suit cannot be utilized for the purpose of other civil suit except with the express consent of the parties and in the present case, no such consent given by the parties – Further held – It is settled that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in

arriving at a decision of another case – No jurisdictional error in the impugned order calling interference under Article 227 of Constitution – Petition dismissed: *Udayraj Vs. Dinesh Chandra Bansal, I.L.R. (2017) M.P. 1116*

3. Scope & Jurisdiction

– Article 227 – Jurisdiction – Held – Jurisdiction under Article 227 cannot be exercised to correct all errors of subordinate Courts within its limitation – It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of the fundamental principle of law and justice: *Mangai Bai (Smt.) Vs. Smt. Hansi Bai @ Hasu Bai, I.L.R. (2018) M.P. 1504*

– Article 227 – Religious Endowment – Public/Private Temples – Rights of Manager – Held – It is established from revenue records that title holder of property is the deity – Once a property is dedicated to temple in favour of established idol, disposal/sale of such property by its Manager is illegal and same is to be protected by Courts as deity is a perpetual minor – Respondent (*original petitioner*) is simply a Manager and not the title holder – Impugned order quashed – Writ Appeal allowed: *Surendra Singh Vs. Sagarbai, I.L.R. (2019) M.P. 1376 (DB)*

– Article 227 – Scope – Limited Jurisdiction – Interference can be made under Article 227 only if order is passed by a Court having no jurisdiction or it suffers from manifest procedural impropriety or perversity – Erroneous order is not required to be corrected under supervisory jurisdiction: *Pratibha Mohta Vs. Sanjay Baori, I.L.R. (2016) M.P. *13*

– Article 227 – Scope & Jurisdiction – Compromise Decree – Held – While exercising power under Article 227, a compromise decree cannot be passed in favour of parties: *Mohar Singh Vs. Gajendra Singh, I.L.R. (2020) M.P. *18*

– Article 227 – Scope & Jurisdiction – Held – High Court in exercise of its power of superintendence cannot interfere to correct mere errors of law or fact or just because another view than the one taken by Tribunals or subordinate Courts, is possible – Jurisdiction has to be very sparingly exercised: *R.D. Singh Vs. Smt. Sheela Verma, I.L.R. (2020) M.P. 2646*

– Article 227 – Scope & Jurisdiction – Held – Interference under Article 227 can be made on limited grounds – If order suffers from any jurisdictional error, palpable procedural impropriety or manifest perversity, interference can be made – Another view is possible is not a ground for interference: *Beyond Malls LLP Vs. Lifestyle International Pvt. Ltd., I.L.R. (2020) M.P. 2650 (DB)*

– Article 227 – Scope and Jurisdiction – Held – Interference u/S 227 can be made on limited grounds, if impugned order suffers from any jurisdictional error,

manifest procedural impropriety or palpable perversity – "Another view is possible" is not a ground for interference – High Court is not obliged to correct the mistakes of facts and law which does not have any drastic effect: *Arun Kumar Brahmin Vs. Smt. Maanwati, I.L.R. (2019) M.P. 136*

– Article 227 – Scope and Jurisdiction – Held – It is settled law that jurisdiction under Article 227 cannot be exercised to correct all errors of Subordinate Court – It can be exercised where any order is passed in grave dereliction of duty and flagrant abuse of fundamental principles of law and justice: *Noor Mohammad Vs. State of M.P., I.L.R. (2019) M.P. 132*

– Article 227 – Scope & Jurisdiction – Reliefs – Held – This Court cannot travel beyond the relief prayed by petitioner: *Sumedha Vehicles Pvt. Ltd. (M/s) Vs. Central Government Industrial Tribunal, I.L.R. (2020) M.P. 2081*

– Article 227 – Scope of interference – Is limited, if order passed by court having no jurisdiction and suffers from manifest procedural impropriety or perversity – Another view is possible is not a ground for interference – Interference can be made for the said purpose and not for correcting error of law and facts in a routine manner: *Gopaldas Khatri Vs. Dr. Tarun Dua, I.L.R. (2018) M.P. 1934*

– Article 227 – Supervisory Jurisdiction – Held – In exercise of supervisory jurisdiction under Article 227, Courts have devised self- imposed rules of discipline on their power – Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available – High Court can also refuse to exercise power of superintendence during pendency of proceedings – Such power of superintendence cannot be invoked to correct an error of fact, which only a superior Court can do in exercise of its statutory power as Court of Appeal – Such power should only be used when the act shows gross failure of justice or grave injustice: *Mahesh Kumar Jha Vs. Union of India, I.L.R. (2020) M.P. 342 (DB)*

– Article 227 – Writ Jurisdiction – Scope – Held – Where question of discretion of trial Court is there, then High Court should not interfere in writ petition filed under Article 227 of Constitution – Scope of Article 227 is very limited in respect of interfering with orders of subordinate Court: *Shehzad Vs. Sohrab, I.L.R. (2018) M.P. 2181*

– Article 227 and Evidence Act (1 of 1872), Section 112 & 114 – DNA Test in Matrimonial Cases – Husband filed a divorce case on the ground that wife is living an adulterous life and questioned the paternity of daughter – Before starting of evidence, husband filed application for DNA test whereas wife refused for the same and accordingly application was dismissed – Challenge to – Held – Apex Court has concluded that though DNA test is most legitimate and scientifically perfect to ascertain

the paternity and infidelity, but for preservation of individual privacy, a person cannot be compelled for DNA test – On such refusal by wife, Court can draw presumption u/S 114 of the Evidence Act without disturbing the presumption envisaged u/S 112 of Evidence Act – No illegality in impugned order – Petitioner will be at liberty to file application for DNA test after recording of evidence or may request the Court to draw adverse inference in terms of Section 114 of the Act of 1872 for refusing the DNA test: *Badri Prasad Jharia Vs. Smt. Seeta Jharia, I.L.R. (2017) M.P. 1824*

4. Suppression of Material Facts/Fraud

– Article 227 – Consent Decree – Fraud & Mis-representation – Suppression of Facts – Effect – Held – Despite having full knowledge of previous transaction/ agreements and cancellation of such agreement and by suppressing earlier proceedings, subsequent sale deed got executed by R-2 in favour of R-1 is clearly a fraud played in connivance – Fraud played with the petitioner as well as with trial Court while obtaining consent decree in Lok Adalat – Fraud vitiates everything – Subsequent sale deed declared null and *void ab initio* and is set aside – Respondents, being guilty of misrepresentation, cost of 50,000 each imposed – Petitions allowed: *Purnima Parekh (Smt.) Vs. Ashok Kumar Shrivastava, I.L.R. (2020) M.P. 332*

– Article 227 – Suppression of Facts – Held – There was a conscious and deliberate suppression of fact of earlier litigation with a sole intention to obtain favourable order, by playing fraud on Court – Cost of 2 lacs imposed – Petition dismissed: *Pratap Singh Gurjar Vs. State of M.P., I.L.R. (2019) M.P. *42*

5. Validity of Arbitration Agreement

– Article 227 – Arbitration and Conciliation Act (26 of 1996), Section 8 – Rejection of application for referring the matter to arbitration – Held – In a suit where very existence and validity of arbitration agreement is under challenge, Section 8 cannot be invoked – Issue declaring the agreement as null and void can be decided by the trial Court and not by arbitrator – No illegality in order – Petition dismissed: *GAIL Gas Ltd. Vs. M.P. Agro BRK Energy Foods Ltd., I.L.R. (2016) M.P. 2771*

6. Miscellaneous

– Article 227 – See – Civil Procedure Code, 1908, Order 39: *Samudri Bai (Smt.) Vs. Mohit Kumar Jain, I.L.R. (2017) M.P. *162*

– Article 227 – See – Civil Procedure Code, 1908, Section 96, Order 7 Rule 11 & Order 6 Rule 16: *Sunita Sharma (Smt.) Vs. Deepak Sharma, I.L.R. (2018) M.P. 2435*

– Article 227 – See – The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, Section 8: *Beyond Malls LLP Vs. Lifestyle International Pvt. Ltd., I.L.R. (2020) M.P. 2650 (DB)*

• **– Article 229(2)** – Powers of Chief Justice – Under Article 229(2) of the Constitution, Chief Justice has the power to frame Rules with regard to pay and allowances of the employees of the Court and send the same to the State Government for approval of the Hon'ble Governor: *Kishan Pilley Vs. State of M.P., I.L.R. (2017) M.P. 1423 (DB)*

– Article 246 – See – VAT Act, M.P., 2002, Section 2(u) & 2(v): *Idea Cellular Ltd., Indore (M/s.) Vs. The Asstt. Commissioner of Commercial Tax LTU, Indore, I.L.R. (2017) M.P. 1350 (DB)*

– Article 286 – See – Madhya Pradesh Reorganisation Act, 2000, Sections 78, 84 & 85: *State of M.P. Vs. Lafarge Dealers Association, I.L.R. (2019) M.P. 2403 (SC)*

– Article 299(1) and Excise Act, M.P. (2 of 1915), Section 18 – Statutory Contract – Scope – Held – State Government u/S 18 has exclusive privilege of manufacturing, selling and possessing intoxicants for consideration – Excise Contract under the Excise Act, which comes into being on acceptance of bid, is a statutory contract falling outside the purview of Article 299(1) of Constitution: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Article 300 – Rights of Occupants of Lands in Cantonment Area – Held – State Government has enacted Rules of 2017 to regulate the cases of persons occupying Cantonment property – It is not a case where title holder is being deprived of his legitimate right of title – Rule of 2017 provides that in case, no application is filed by an occupant, appropriate action for eviction will be taken by the Council – If such action is taken by the Council, occupant shall certainly defend himself by placing relevant documents in support of his claim – Municipal Council Neemuch or any other agency of State Government are not going to evict someone without following due process of law: *Mohanlal Garg Vs. State of M.P., I.L.R. (2018) M.P. 1631 (DB)*

– Article 300A – Protection thereof – When can be claimed – Held – To claim protection of the Article, onus is on the person claiming to show that the land in question is his property and he had acquired Bhumiswami rights: *Gajraj Singh Vs. State of M.P., I.L.R. (2017) M.P. 889*

– Article 300-A – Right to Property – Held – A title holder of property who is recorded as Bhumiswami cannot be thrown out of his property and is deprived of

his constitutional rights guaranteed under Article 300-A of the Constitution, without there being any statutory provision reflected in the impugned order on the basis of which said property could be declared property of State Government: *The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1063*

– Articles 304(b) & Seventh Schedule, List III – Freedom of Trade and Commerce – Held – State law will prevail notwithstanding the Central Law as President sanction was sought and granted not for the reason that proposed legislation falls in List III of Seventh Schedule but for the reason that it affects freedom of trade and commerce granted under Article 304(b) of Constitution – Once sanction is granted by President, State law will prevail over the Central law: *Popular Plastic (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. *93 (DB)*

– Article 309, Proviso and Indian Railways Establishment Manual (IREM) – Service Conditions – Held – Rules under IREM has been issued in exercise of powers vested under proviso to Article 309 of Constitution and hence has statutory force: *Prabhat Ranjan Singh Vs. R.K. Kushwaha, I.L.R. (2019) M.P. 245 (SC)*

– Article 311 – Protection thereof to a daily wager whether permissible – Held – A daily wager is not the holder of Civil Post and protection under Article 311 is not available to him – Further held – Petitioner's termination order could not have been passed by the Authority subordinate to the Superintendent who was his Appointing Authority – The Superintendent works under the overall supervision of Collector and the High Court in W.P. No. 5181/2005 directed the Collector to look into the grievance of the petitioner, therefore, the act of the Collector in passing the order both in his capacity as a Superior Authority to the Appointing Authority and also in terms of directions of the H.C. cannot be faulted with: *Siyaram Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3325*

– Article 311 & 309 – Compulsory retirement – Not a punishment – It implies no stigma nor suggestion of misbehaviour: *Shiv Kumari Gulhani (Smt.) Vs. District and Sessions Judge, Mandla, I.L.R. (2016) M.P. 73 (DB)*

– Article 311 & 309 – Compulsory retirement – Subjective satisfaction – Petitioner was advised to improve his work – He was also graded "E" (poor) – He was negligent in working, he was not punctual and there was no improvement inspite of repeated warnings – Ample material on record for the District and Sessions Judge to form a subjective satisfaction that it is in public interest to compulsorily retire the petitioner at the premature age of 57: *Shiv Kumari Gulhani (Smt.) Vs. District and Sessions Judge, Mandla, I.L.R. (2016) M.P. 73 (DB)*

– Article 311(2) – Held – Apex Court held, that if disciplinary authority disagrees with findings of inquiry authority then it has to issue a show cause notice to

delinquent employee mentioning the grounds of disagreement – In the instant case, no show cause notice was issued to petitioner at the time when department/disciplinary authority disagreed with findings of Inquiry Officer and subsequently issued show cause notice regarding why he should not be punished with dismissal of service and recovery of amount – Procedure adopted by disciplinary authority is contrary to law and violative of Article 311(2) of Constitution: *Ashok Sharma (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 2173*

– Article 311(2)(b) – See – Service Law: *Brijpal Singh Vs. Dy. Inspector General of Police, Indore, I.L.R. (2017) M.P. *68*

– Article 320(3) – See – Service Law: *S.K. Agarwal Vs. State of M.P., I.L.R. (2017) M.P. 1840*

– Article 320(3) and Public Service Commission (MP) (Limitation of functions) Regulations, 1957, Regulation 6 – Petition against order imposing punishment of withholding two increments as well as recovery of money – Held – As per Article 320(3), it is the duty of the Public Service Commission to advice the matter so referred but the said advice is not binding in nature – PSC also framed Regulations of 1957 under the said Article 320(3) of the Constitution – Regulation 6 provides that before imposition of any penalty under Rule 15 of CCA Rules, the approval of the PSC is necessary – In the present case, no approval from PSC was obtained before imposing major punishment on the petitioner and further the report obtained from PSC is required to be supplied to the delinquent – Punishment order set aside – Respondents directed to send the enquiry report to PSC for obtaining necessary approval and thereafter pass appropriate order – Petition allowed: *Sunil Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 72*

– Article 329 – Representation of the People Act (43 of 1951), Sections 14 & 66 – Election – Meaning thereof – Term 'Election' as occurring in Article 329 of the Constitution means and includes the entire process from the issue of notification u/S 14 of the Act of 1951 to the declaration of result under Section 66 of the Act of 1951: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Article 329(b) – See – Conduct of Election Rules, 1961, Section 56D: *Amitabh Gupta Vs. Election Commission of India, I.L.R. (2019) M.P. *14 (DB)*

– Article 343 & 345, Official Language Act, M.P., 1957 (5 of 1958), Section 3, Civil Procedure Code (5 of 1908), Section 137(2), Civil Courts Rules, M.P. 1961, Rule 8 and State Notification dated 22.11.1976 – Official Language of Court – Constitutional, Statutory, Codified and Notified intent makes it very clear that official language of Court other than High Court shall be Hindi – This Court also vide Memo

dated 27.01.1977 directed all its subordinate Courts to use and enforce Hindi in all its civil and criminal proceedings – Further held – Advocate being an Officer of Court is expected to honour the Court language (civil and criminal Courts) as reflected through different enactments made in this regard – Appellate Court did not cause any illegality while asking for Hindi translated copy of appeal memo – Petition dismissed: *Vinod Devi (Smt.) Vs. Smt. Saroj Devi Gupta, I.L.R. (2018) M.P. 1164*

– Article 350 – Language – Held – Under Article 350 (special directives), it has been expected that redressal of any grievance of a person can be made without language barrier – Language cannot be a bar in dispensation of justice: *Vinod Devi (Smt.) Vs. Smt. Saroj Devi Gupta, I.L.R. (2018) M.P. 1164*

– Article 363 – Scope & Jurisdiction – Held – As property in question was not the property of Maharaja, Article 363 of Constitution comes into play – Court does not have power to draft the Trust Deed nor is having power to enact the statute in respect of Trust – Impugned order is contrary to constitutional mandate provided under Article 363 and infact petitions were not at all maintainable in respect of properties of State government – Impugned order set aside – Appeals allowed and Petition disposed of: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

– Entry 53 of List II of Schedule VII – See – Upkar Adhiniyam, M.P., 1981, Section 3(1): *Deepak Spinners Ltd. Vs. State of M.P., I.L.R. (2018) M.P. 38 (DB)*

CONTEMPT OF COURTS ACT (70 OF 1971)

– Sections 2(c), 12 & 14 – Allegation of Corruption against Judges without any justification and Proof – Petitioner filed a PIL which was later converted into a regular petition and was subsequently dismissed because of the default of peremptory directions – Petitioner sent a communication to Court through speed post stating "Judges of this Court are possibly corrupt" – Contempt proceedings were drawn against petitioner – Held – Contemner is not an illiterate person and is a professor – In the highlighted portion of his reply, he clearly stated that, Bench dismissed his petition "possibly due to receiving corruption amount" – Petitioner fails to produce or submit any evidence in respect of such allegations – Amicus curiae appointed by this Court has explained the petitioner that such conduct was contemptuous but petitioner was stick to the allegation – Prima facie looking to his conduct and the repeated assertions and unsubstantiated allegations made by him against sitting judges of this Court, he is guilty of committing contempt of this Court – Such statement is defamatory, libelous, scurrilous, vilificatory and is totally unfounded attack on judicial system, the dignity and authority of this Court – Petitioner sentenced to three months simple imprisonment: *In Reference Vs. Lavit Rawtani, I.L.R. (2017) M.P. 1669 (DB)*

– Section 10 & 12 – Constitution – Article 215 – Contempt of Court – Court directed to fix the salary, restore D.A. according to law & issue fresh PPO – After revising the salary & DA fresh PPO issued by the respondents – Petitioner not satisfied with calculation or fixation – Fresh cause of action arise to the petitioner to seek redressal – No case for initiating contempt of court proceedings: *Satish Shrivastava Vs. M.K. Varshney, I.L.R. (2017) M.P. *27*

– Sections 10, 15 & 16 – Shri Jitendra Singh Chouhan, Advocate practicing at Manavar – He appeared before the Court of Tehsildar – Petition has been filed praying that respondent Tehsildar has committed criminal contempt of Court by insulting and misbehaving with the Advocate by obstructing the administration of justice, therefore, prayed that he be suitably punished – Held – A legal practitioner has important duty and obligation to co-operate with the Court for just and proper administration of justice – Chouhan without submitting his vakalatnama was seeking adjournment and shouting in the Court, while Tehsildar was hearing other case – When Tehsildar asked Shri Chouhan to maintain the decorum of the Court, he continued shouting there – Tehsildar asked Shri Chouhan, Advocate to leave the Court does not amount to contempt of Court – No case is made out against Tehsildar for committing contempt of Court – Petition dismissed: *Bar Association, Manavar Vs. Shri Satyendra Singh, I.L.R. (2016) M.P. 860 (DB)*

CONTRACT

– Incorrect information – Tenders were invited for providing Security services – Firm was to employ at least 62 employees and minimum wages were to be paid as per rate fixed by Collector and EPF, ESI and Service Tax was to be paid to workers – Security guards and supervisors are to be paid the wages fixed for semi skilled labour – The rate quoted by respondent no. 4 was lowest as he did not quote the amount of EPF, ESI and service tax payable by contractor – It was obligatory on the part of Committee to verify the fact that whether the rates quoted by contractors are in accordance with terms and conditions of tender document – As respondent no. 4 has violated the terms and conditions of tender document in fixing the rate of wages which have to be paid to security guards – Award of contract in favour of respondent no. 4 is bad and hence quashed: *Noor Associates (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 1302*

– Judicial Review – Cancellation of tender and re-inviting the same by reviewing minimum required license fee – Held – Scope of interference in such matter is limited unless shown to be arbitrary, discriminatory or suffering from *mala fides* – On the basis of participation in tender, bidder does not get any right to compel the authority to accept the bid – Bidder is only entitled to a fair, equal and non discriminatory treatment in the process of tender and can come to the court complaining, if

government authorities have not acted reasonably & fairly: *Prakash Namkeen Udhyog (M/s.) Vs. Airport Authority of India, I.L.R. (2016) M.P. *33*

– Request for proposal – A unified scheme for amalgamating medical schemes like Sanjeevani 108, Janani Express etc. with condition that applicant should have atleast 50 crores of average annual turnover – Held – Merely because individually the petitioners would not be eligible to take part in the scheme, it cannot be said that such policy by the state is not just or proper or is arbitrary, as it is for the benefit of public at large – Petition dismissed: *Community Action Vs. State of M.P., I.L.R. (2016) M.P. 1640*

– Tender – Eligibility to participate in tender process – Petitioner Company is engaged in generation of power which is supplied to consumers/grid – Petitioner company is operating in a regulated sector, regulated under the provisions of Electricity Act – Tender Process for allotment of Coal Mines is in respect of coal mines earmarked for non-regulated sector – Held – Central Govt. has power to classify the coal mines for specified end uses – Petitioner who intends to use the coal for generation of power per se is not qualified to participate in auction process of the subject coal mines which is earmarked for end use of non regulated sector, for optimum utilization of national resources: *B L A Power Pvt. Ltd. Vs. Union of India, I.L.R. (2016) M.P. 129 (DB)*

– Terms and Conditions – Termination of Contract & Imposition of Penalty – Appellant company invited tender for procurement of power from Grid Connected Solar Energy, whereby respondent No.1 was successful bidder – Letter of intent was issued and bank guarantee was submitted – Respondent No. 1 unable to purchase land and subsequently State Government allotted land for establishment of power plant – Respondent No. 1 requested for change of location which was duly accepted and accordingly on a changed location, land was purchased – Appellant invoking clause of agreement, terminated the contract and imposed penalty, invoking bank guarantee submitted by respondent No. 1 – Challenge to – High Court set aside the order of termination of contract and upheld invocation of bank guarantee for penalty – Held – Delay caused in commissioning of project seems to be due to unavoidable reasons like heavy resistance faced at allotted site due to encroachments – Considering the subsequent change of location and huge investment in project and when project is in final stage of commissioning, termination of contract is unfair – Imposition of penalty is justified – Respondent No. 1 directed to pay the penalty as directed – Appeal dismissed: *M.P. Power Management Co. Ltd. Vs. Renew Clean Energy Pvt. Ltd., I.L.R. (2018) M.P. 1595 (SC)*

CONTRACT ACT (9 OF 1872)

– Section 2(b) & 5 – Liquor Trade – Contract – Offer & Counteroffer – Conditional/Provisional Acceptance – Effect – Held – Power of acceptance of offeree can be terminated, if offeree, instead of accepting the offer, makes a counteroffer, because it is new offer which varies the terms of original offer – Similarly, conditional or qualified/ partial acceptance changes the original terms of an offer and operates as counteroffer – In present case, acceptance communicated to petitioners was neither a provisional acceptance nor a conditional/qualified acceptance – No new offer made to petitioners which alters the original offer – Conditions of issue of licence such as security deposit in form of bank guarantee, post dated cheques as additional security or execution of counter part agreement, cannot be treated to be a counteroffer: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 2(b) & 5 – See – Constitution – Article 226: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 2(b) & 5 – Tender Conditions – Apex Court concluded that Court is not the best judge to say which tender conditions would be better and it is left to discretion of authority calling the tender – Petitioner having participated in tender knowing fully provisions of policy cannot subsequently say that those conditions are arbitrary and illegal: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 2(b) & 5 – Validity of Contract – Offer & Acceptance – Held – Although an offer does not create any legal obligations but after communication of its acceptance is complete, it turns into a promise and becomes irrevocable – Acceptance of offer of petitioners, (through e-auction or renewal/lottery) were communicated by respondents and till that date, there was no withdrawal or any objection regarding revaluation of auction process – Contract concluded: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 2(b) & 5 and Disaster Management Act (53 of 2005), Section 6(2)(i) & 10(2)(i) – Liquor Trade – Enforceable Contract – Excise Policy 2020-21 – Covid-19 Pandemic – Validity of Contract – Held – For an enforceable contract, there must be an offer and an unconditional and definite acceptance thereof – Acceptance of offer was communicated to petitioner and as per Policy, essential requirements have been complied with and mandatory payments in terms of acceptance letters, have been made by many petitioners during lockdown period only – Contract is concluded and is binding on petitioners, they cannot withdraw or revoke the same on pretext that no licence was issued by respondents prior to or on date of commencement of licence period or that the licence was issued without complying

conditions stipulated in Excise Policy or Excise Act – Petitions dismissed: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Sections 2(e), 23 & 28 – See – Criminal Procedure Code, 1973, Section 125: *Afaque Khan Vs. Hina Kausar Mirza, I.L.R. (2019) M.P. 1782*

– Section 6 – See – Civil Procedure Code, 1908, Order 21 Rule 65 & 69(2), Form No. 29: *Manish Tiwari Vs. Deepak Chotrani, I.L.R. (2020) M.P. 1363*

– Section 11 – See – Criminal Procedure Code, 1973, Section 482: *Antim Dubey Vs. State of M.P., I.L.R. (2018) M.P. 1588*

– Section 20 – Mistake of fact – In order to attract the applicability of mistake of fact, it has to be common mistake of both the parties with regard to vital facts of the agreement: *Rachana Bhargava (Smt.) Vs. Krishanlal Sahni, I.L.R. (2016) M.P. 2535 (DB)*

– Section 23 – See – Accommodation Control Act, M.P., 1961, Section 6(1)(2): *Rajendra Kumar Gupta Vs. Ram Sewak Gupta, I.L.R. (2016) M.P. 1429*

– Section 23 – See – Benami Transactions (Prohibition) Act, 1988, Section 2(a): *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 23 – See – Constitution – Article 226: *AKC & SIG Joint Venture Firm (M/s.) Vs. Western Coalfields Ltd., I.L.R. (2020) M.P. 1134 (DB)*

– Section 28 – See – Arbitration and Conciliation Act, 1996, Section 11: *Shakti Traders (M/s) Vs. M.P. State Mining Corporation, I.L.R. (2019) M.P. 1763*

– Section 56 – Covid-19 Pandemic – Performance of Contract – Unlawful/ Frustrated/Unworkable – Held – It cannot be said that contract between parties had become totally unworkable, impossible, frustrated and unlawful to perform – It was only a case of hardship and interruption in operation of liquor shops for only about two months for which State, vide amendment in policy has given an option to extend the period of licence by two months – State granted several relaxations and waiver of licence fee etc – MRP of liquor was also increased to cover the loss – Petitioners cannot claim that they are excused from performance of contract – For application of Section 56, the entire contract must become impossible to perform: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 56 and Excise Policy 2020-21, Clause 48 – Applicability – Performance of Contract – "Force Majeure" Event – Held – Apex Court concluded that Section 56 applies only when parties have not provided for as to what would happen when contract becomes impossible to perform – In present case, consequences of non-performance of contract are clearly depicted in the policy – By virtue of

clause 48 *"force majeure"* condition was expressly and impliedly within contemplation of parties and thus Section 56 of Contract Act cannot be invoked: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 70 – Variations in Agreement – Held – Once there was sanction of Superintending Engineer of works to change the quarry for circumstances beyond control of contractor, then the contractor is entitled to be compensated for such variations – Revision dismissed: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Section 73 – Compensation for loss or damages caused by the breach of contract – Compensation can only be given for any loss actually suffered and not for any indirect loss: *Rachana Bhargava (Smt.) Vs. Krishanlal Sahni, I.L.R. (2016) M.P. 2535 (DB)*

– Section 73 & 74 – Extension of time period for completion of work – Liquidated damages – Held – The extension in time does not extend the period of completion of the agreement – It only permits the Contractor to complete works subject to payment of liquidated damages, as agreed to – Liquidated damages are claimed on account of breach of the contract and such amount cannot be said to be unreasonable or is by way of penalty: *The General Manager Vs. M/s. Raisingh & Company, I.L.R. (2018) M.P. 2018 (DB)*

– Section 74 – Auction of Nazul Plots – Terms and Conditions – Addition and alteration – Forfeiture of Security Amount – Appellant deposited 3 lacs as security amount as per the advertisement – He was declared the highest bidder, accordingly deposited 1/4th of total amount vide cheque – Later, by issuing a letter, further terms and conditions were intimated to appellant, which he refused to accept as same was not informed earlier in advertisement/ public notice – Appellant made stop payment of cheque – State Government cancelled the allotment and forfeited the security amount of Rs. 3 lacs – Appellant filed a suit before the Trial Court claiming his security amount alongwith interest, which was dismissed – Appeal was also dismissed by the High Court – Challenge to – Held – A party to the contract has no right to unilaterally "alter" or "add" any additional terms and conditions unless both the parties agree to it – The four additional conditions were not the part of public notice which was mandatory on the part of State nor they were communicated to bidders before auction proceedings, for the purpose of compliance, in case their bid is accepted – Further held – In order to forfeit the security amount, contract must have such stipulation of forfeiture and if there is no such stipulation, as in the present case, State has no such right available – No breach of terms by appellant – Action of the State was unjustified as well as bad in law – Money decree of refund of Rs. 3 lacs alongwith

interest of 9% p.a. passed with cost of Rs. 10,000 - Appeal allowed: *Suresh Kumar Wadhwa Vs. State of M.P., I.L.R. (2018) M.P. 1 (SC)*

– Section 128 – Bank Loan – Principle of Promissory Estoppel – Held – Execution of lease deed of land which was the reason/foundation for grant of loan to SBPL, itself was contrary to law and against public interest – Cancellation of such lease deed of land got stamp of approval from this Court – Principle of promissory estoppels or Section 128 cannot be pressed into service in the case of this nature – No fault of JDA withdrawing the consent/ undertaking given for loan – Decision of JDA is taken in public interest and as per public trust doctrine – Petition by Bank dismissed: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Section 176 – Rights of Pawnee in case of default by Pawnor – Held – In case of default by Pawnor, a Pawnee may bring a suit upon the debt and he may retain the pawn as a collateral security, or he may sell it giving the Pawnor reasonable notice of sale – The Pawnee cannot be permitted to recover the debt as well as to retain the pledged goods – The right to sue for debt assumes that he is in a position to redeliver the goods on payment of the debt and therefore, if he has put himself in a position where he is not able to redeliver the goods he cannot obtain a decree – A pawnee has both collateral and concurrent rights and can institute suit for the purpose of realization of said debt or promise while retaining the goods as collateral security – In the peculiar fact situation of the case as the plaintiff bank failed to sell the food grains which were perishable in nature despite request by the defendant and taking into account the fact that plaintiff bank is not in a position to deliver the food grains now, the Court directed that the plaintiff bank shall be entitled to recover the amount of debt along with 20% quarterly interest after adjusting the value of the food grains: *Vijay & Sons (M/s.), Mungavali Vs. Shivpuri Guna Kshetriya Gramin Bank, I.L.R. (2016) M.P. 2791 (DB)*

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT (37 OF 1970)

– Section 10(1) – Prohibition Notification – Absorption of Contract Labourer – Held – Neither Section 10 nor any other provisions of CLRA Act provides for automatic absorption of contract labour on issuing a notification by appropriate Government u/S 10(1) of the Act – Thus, principal employer is not required or is under legal obligation by operation of law to absorb the contract labour working in establishment: *Director Steel Authority of India Ltd. Vs. Ispat Khadan Janta Mazdoor Union, I.L.R. (2019) M.P. 2192 (SC)*

– Section 10(1) – Prohibition Notification – Agreement/Contract – Effect – Held – In instant case, pay slips and identity cards are of prior to notification and do not show that workers were working after notification without break – All agreements were entered into prior to notification and only extended from time to time – No fresh contract after notification – Tribunal rightly recorded that contract was not sham and bogus – Workmen not entitled for their absorption in service of principal employer: *Director Steel Authority of India Ltd. Vs. Ispat Khadan Janta Mazdoor Union, I.L.R. (2019) M.P. 2192 (SC)*

– Section 10(1) – Prohibition Notification – Held – Mere issuance of prohibition notification under the Act will not make the contract/agreement to be *void ab initio* or bad in law – After issuance of notification, if employees are allowed to continue in terms of earlier agreement, it may be illegal: *Director Steel Authority of India Ltd. Vs. Ispat Khadan Janta Mazdoor Union, I.L.R. (2019) M.P. 2192 (SC)*

– Section 10(1) and Minimum Wages Act (11 of 1948), Section 20(1) – Parity in Wages – Burden of proof – Held – Mere assertion of fact that after publication of prohibition notification, the workmen which were allowed to continue with appellant establishment, were performing same or similar kind of work as of direct/regular employees, is not sufficient to endorse their entitlement for claiming wages notified for regular employees – No specific pleadings on record – Initial burden was on respondents to proof such fact, which was not discharged by them – Impugned orders set aside – Appeal allowed and the one filed by employees is dismissed: *Steel Authority of India Ltd. Vs. Jaggu, I.L.R. (2019) M.P. 2173 (SC)*

– Section 10(1), Contract Labour (Regulation & Abolition) Central Rules, 1971, Rule 25(2)(iv) & (v) and Minimum Wages Act (11 of 1948), Section 20(1) – Publication of Prohibition Notification – Effect – Held – After issuance of Prohibition Notification u/S 10(1) of CLRA Act, provisions of the Act of 1970 or Rules of 1971 would not be available to either parties to strengthen their claim – Minimum wages can be claimed independently under the Act of 1948 – Rule 25(2)(iv) & (v) is not applicable as it was the obligation upon the contractor to comply with conditions enumerated thereunder: *Steel Authority of India Ltd. Vs. Jaggu, I.L.R. (2019) M.P. 2173 (SC)*

– Section 21(4) and Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952) – Duty of the principal employer – Even if a person is engaged through a contractor it is duty of Principal employer to ensure payment of provident fund in respect of workman in question and also to ensure payment of gratuity and payment of wages to the workman who has worked for him – Although employees were engaged through the contractor however, same will not certainly

absolve the principal employer from his duty to make payment of gratuity to Respondent No. 1: *Grasim Industries Ltd. Vs. Duley Singh, I.L.R. (2017) M.P. *19*

CONTRACT LABOUR (REGULATION & ABOLITION) CENTRAL RULES, 1971

– Rule 25(2)(iv) & (v) – See – Contract Labour (Regulation and Abolition) Act, 1970, Section 10(1): *Steel Authority of India Ltd. Vs. Jaggu, I.L.R. (2019) M.P. 2173 (SC)*

CONTRACTUAL EMPLOYEES

– Adjudication of Dispute – Powers of Labour Court/Tribunal – Held – In industrial jurisprudence, it is now settled that even in cases of contractual employees, labour Courts are equipped with the power to examine the real nature of employment – Whether members of Union are "Workmen" or not can be examined by appropriate Tribunal/labour Court after recording evidence: *Zila Satna Cement Steel Foundry Khadan Kaamgar Union Through Its General Secretary, Ramsaroj Kushwaha Vs. Union of India, I.L.R. (2018) M.P. 2171*

CO-OPERATIVE SOCIETIES ACT, M.P., 1960 (17 OF 1961)

– Extinguishment Deed – Held – If a member of Society fail to comply with stipulations of allotment, it would be open to Society to cancel such allotment including membership of that member and in such event it is necessary for the Society to execute an Extinguishment deed in respect of the such allotment deed – Mere cancellation of membership is not enough: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

– Sections 9, 18-A & 80-A – Cancellation of Registration of Society/ De-Registration – Revision – Powers of Registrar/Joint Registrar – Delegation of Authority – In revision u/S 80-A of the Act of 1960, Registration of the society was cancelled by the Joint Registrar – Held – Powers u/S 80-A which are conferred on the Registrar are not only confined to merely examining the legality or regularity of any proceeding but also enables the Registrar to modify, annul or reverse any decision, order or proceeding taken up by any subordinate officer or the Board of Directors – Perusal of second proviso to Section 80-A and several notification of the State Government makes it clear that powers of the Registrar can be delegated but not below the rank of Joint Registrar and thus powers as conferred on the Registrar u/S 80-A of the Act can be exercised by the Joint Registrar – Further held – Despite having an alternate remedy u/S 18-A for De-Registration of a society, revisional powers u/S 80-A can be invoked and exercised by the authority – No illegality in the impugned

order passed by the Joint Registrar – Petition dismissed: *Adarsh Adivasi Machhchua Sahkari Samiti Maryadit Vs. Joint Registrar, Cooperative Societies, Jabalpur Division, Jabalpur (M.P.), I.L.R. (2017) M.P. *65*

– Section 48-AA & 50A – Disqualification – Both the provisions can stand together – Principle of Natural Justice is presumptive unless and until excluded by express words – As society has already initiated action u/s 48-AA, therefore, Registrar has no power to pass order u/s 50-A – Order passed by Registrar disqualifying the petitioners set aside: *Registered District Co-operative Agricultural and Rural Development Bank Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 1017*

– Section 48-AA & 50A – Disqualification – Implied Repeal – Legislature while enacting provisions has complete knowledge of existing provision – When it does not provide a repealing provision, it gives out an intention not to repeal existing legislation – Such presumption can be rebutted when later provision is so inconsistent with or repugnant to earlier provision that two cannot stand together: *Registered District Co-operative Agricultural and Rural Development Bank Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 1017*

– Section 55 r/w Section 64 – See – Constitution – Article 226: *Purshottam Das Joshi Vs. District Co-operative Central Bank, Datia, I.L.R. (2016) M.P. 2179*

– Section 57 B – Preparation of Electoral Rolls – The power under Section 57-B (2) relates to the preparation of electoral rolls and the conduct of all elections of cooperative society, and it does not extend to set aside the elections held for the reason of improper rejection of nomination papers and subject matter which is covered within the scope of election dispute under Section 64 of the Act: *Nathuram Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3253*

– Section 64 – Election dispute – Once the result has been declared, the only remedy to the person aggrieved with the declaration of result is to file election petition/ election dispute before the Registrar under Section 64 of the Act – The complaint on the ground of improper rejection of nomination papers can be made as one of the grounds in the Election Petition: *Nathuram Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3253*

– Section 64 – Issues raised in this matter are covered by the provisions of Section 64 of the M.P. Cooperative Societies Act – Co-operative Society Tribunal would have jurisdiction to go into the issues – Dispute can be raised before the Tribunal even by a person who is not a member of the society and the Tribunal would decide it – Appeal is dismissed: *Har Prasad Yadav Vs. Mahaveer Prasad Jain, I.L.R. (2016) M.P. 531*

– Section 64 – Recovery of Amount – Recovery of money, fraudulently deposited in account of petitioners – Held – Dispute u/S 64 filed by Co-operative

Society for recovery of said amount, subsequent to impugned notice, when petitioners failed to deposit the same in compliance of said notice – It cannot be said that notice was bad in law as dispute u/S 64 is pending – Petition dismissed: *Vidhya Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1552*

– Section 64 – Simultaneous Criminal Prosecution – Held – It is well settled that criminal prosecution cannot be quashed only on ground that civil suit is pending – Civil suit and criminal proceedings can go simultaneously – If co-operative society decides to launch criminal prosecution against petitioner, same cannot be quashed merely on ground that dispute u/S 64 is pending: *Vidhya Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1552*

– Section 64 – See – Civil Procedure Code, 1908, Section 100 & Order 7 Rule 11: *Har Prasad Yadav Vs. Mahaveer Prasad Jain, I.L.R. (2016) M.P. 531*

– Section 64 and Registration Act (16 of 1908), Section 69 – Jurisdiction – Alternate Remedy – Plot allotted to appellant's mother by a Cooperative Society through registered deed in 1962 – Allottee expired in 1988 – In 2001, Society, unilaterally cancelled the allotment vide an extinguishment deed on the ground of violation of bye-laws of society in not raising any construction over the plot – In 2004, Society allotted the same plot to a third party vide an registered deed – Later, though vide a compromise, appellant was paid Rs. 6.5 Lacs, he filed an application u/S 64 of the Act of 1960 challenging society's action – Dispute, pending adjudication, in 2006, same plot was again transferred vide registered deed to other persons (*respondent no. 6 &7* herein) – In 2008, appellant also filed application before Sub-Registrar for cancellation of all 3 deeds of 2001, 2004 and 2006 which was dismissed – Appellant's application u/S 69 of the Act of 1908 before Inspector General (Registration) was also dismissed on ground of limited jurisdiction – Appellant's petition before High Court was also dismissed – Challenge to – Held – Party may have several remedies for same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions – Looking to conduct of appellant that he is pursuing multiple proceedings for same relief despite having an alternative and efficacious statutory remedy to which he has already resorted to, High Court rightly dismissed the petition – Appeal dismissed: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

– Section 64 & 82 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Allegation relates to the violation of the principles of natural justice and passing an order without following the requirement of statute and not acting in accordance with the fundamental principles of judicial procedure, therefore, when such allegations were made, the plaint could not have been rejected at the threshold on the ground that the civil court had no jurisdiction – At the most trial court could have framed an issue in respect of the jurisdiction and decided the same on the basis of the evidence

relating to the aforesaid plea raised in the plaint: *Prakash Vs. Manager, Smriti Nagarik Sahakari Bank, I.L.R. (2017) M.P. 344*

– Sections 64, 82 & 84 – Co-operative Societies Rules 1962, Rule 66(6) – Suit for declaration and permanent injunction was filed by the appellant/plaintiff on the ground that the order was passed by Joint Registrar without giving an opportunity of hearing and the order was illegal and improper – Whether suit filed by the appellant/plaintiff is barred by Section 82 of the above Act – Held – No – Dispute is about the matter touching the business of the co-operative society – Jurisdiction of the civil court is not excluded where provision of a particular statute have not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure or if part of the action of the state is violative of the constitutional provision or the mandatory requirement of statute or statutory rules are not followed – Civil suit is maintainable: *Prakash Vs. Manager, Smriti Nagarik Sahakari Bank, I.L.R. (2017) M.P. 344*

– Section 82 – Bar of jurisdiction – Bar of jurisdiction is to be decided by trial court after framing the issue and permitting the parties to lead evidence: *Prakash Vs. Manager, Smriti Nagarik Sahakari Bank, I.L.R. (2017) M.P. 344*

CO-OPERATIVE SOCIETIES RULES, 1962

– Rule 66(6) – See – Co-operative Societies Act, M.P. 1960, Sections 64, 82 & 84: *Prakash Vs. Manager, Smriti Nagarik Sahakari Bank, I.L.R. (2017) M.P. 344*

COPYRIGHT ACT (14 OF 1957)

– Section 63 – See – Penal Code, 1860, Section 420: *Kasim Ali Vs. State of M.P., I.L.R. (2016) M.P. 2624*

– Section 63 & 64 – Allegation against the petitioner is that the spark plugs found in his possession were not original but duplicate – Held – The allegation does not fall within the 'work' as defined in the Act, which means a literacy, dramatic, musical or artistic work, a cinematograph film or sound recording – Spark plug cannot be treated as artistic work, and therefore, Section 63 of the Act has no application in the present case – Further held – The satisfaction of Police Officer about the applicability of Section 63 is *sine qua non* for exercising the powers under Section 64: *Kamal Kishor Vs. State of M.P., I.L.R. (2016) M.P. 2851*

– Section 63 & 64 – Interpretation of Statutes – Construction of Penal Statutes – A penal provision must receive strict construction – Section 63 is a penal provision prescribing offences relating to copyright or other rights conferred by the Copyright Act, and therefore, must be strictly construed: *Kamal Kishor Vs. State of M.P., I.L.R. (2016) M.P. 2851*

– Section 63 & 64 – Practice (Criminal) – Investigation by the Complainant himself – Effect thereof – Unless in a given situation a case of prejudice is made out, the order/enquiry would not get vitiated – In judging the question of prejudice, the Court must act with a broad vision and look to the substance and not to technicalities – Unless it is shown that the concerned Police Officer was personally interested to get the conviction of the accused, no interference is warranted: *Kamal Kishor Vs. State of M.P., I.L.R. (2016) M.P. 2851*

COUNTRY SPIRIT RULES, M.P., 1995

– Rule 4(4) & 11 – Tender Notice – Violation of Conditions – Held – Any condition mentioned in tender notice shall be an integral part of contract granted under Rules of 1995 – Bidder cannot wriggle out of the contractual obligations – In view of Rule 11, violation of tender notice shall be violation of Rule 4(4) of the Rules of 1995: *Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1841*

– Rule 4(4) & 12 – Penalty – Held – Non maintenance of atleast 25% of minimum stock in glass bottles amounts to violation of Rule 4(4) of the Rules of 1995 – Penalty rightly imposed under Rule 12 of the Rules of 1995 – Petitions dismissed: *Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1841*

– Rule 12 – Penalty – Concept – Held – Penalty is not imposed by way of punishment for committing any offence, but it is imposed for better enforcement of provisions of law: *Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1841*

COURT FEES ACT (7 OF 1870)

– Section 7(iii) & 7(iv)(c) – Payment of Court Fees – Deed of transfer/ conveyance – Executant or non-executant – Ad-Valorem or fixed – Three situations discussed: *Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai, I.L.R. (2017) M.P. 874*

– Section 7(iii) & 7(iv)(c) – Under valuation and deficit court fees – Facts – Respondent/plaintiff filed a suit for declaration that gift deed executed by plaintiff (mother of the petitioner) in favour of petitioner/defendant is null & void – Objection regarding under valuation and deficit court fees by defendant/petitioner was rejected by trial Court – Held – The plaintiff (mother) being executant of the gift deed in favour of defendant (daughter) has parted with possession of the property, so in this light of the fact the order impugned herein is unsustainable in the eyes of law and therefore set aside – Trial Court directed to reconsider and decide the objection of the petitioner/defendant afresh – Petition disposed of: *Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai, I.L.R. (2017) M.P. 874*

– Section 7(iv) – Ad-valorem Court Fees – Trial Court directed the petitioner/plaintiff to pay ad-valorem court fee – Challenge to – Held – Sale deed in question was executed by mother of plaintiff – In the said sale deed, petitioner/plaintiff himself was a witness – Plaintiff claiming declaration of sale deed as null and void – Required to pay ad-valorem court fee – Trial Court's order justified – Petition dismissed: *Dilip Kumar Vs. Smt. Anita Jain, I.L.R. (2018) M.P. *5*

– Section 7(iv)(c) – Ad Valorem Court fees – Held – Plaintiff claiming 1/3rd share in property and seeking declaration of sale deed as null and void, though she is not a party to the sale deed – Ad valorem court fees on 1/3rd value of the registered sale deed is payable: *Ankur Dubey Vs. Jayshree Pandey, I.L.R. (2019) M.P. 2106*

– Section 7(iv)(c) – Rejection of application filed under Order 7 Rule 11 of CPC – Partition deed is a registered document and relief claimed is of declaration of the partition deed to be null & void and for permanent injunction – Plaintiff is a party to the partition deed, and as such, he is required to pay and affix the ad-valorem court fees: *Anil Tripathi Vs. Smt. Urmila Tripathi, I.L.R. (2016) M.P. 3364*

– Section 7(iv)(c) – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai, I.L.R. (2018) M.P. *52*

– Section 7(iv)(c) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Ad valorem Court Fee – Rejection of plaint – Suit for declaration of a decree and consequential relief – When the sale deed is challenged by the plaintiff in possession of the suit property as void and the plaintiff is not a party to the sale deed, no ad valorem court fees are required: *Vijay Kumar Vs. Vinay Kumar, I.L.R. (2016) M.P. 1067*

– Section 7(iv)(c) & 7(v)(a) – "Cancellation of Sale Deed" & "Declaration of Sale Deed as Void" – Held – "Cancellation" implies that persons suing should be a party to the document – If executant wants to avoid sale deed then has to seek cancellation of sale deed and has to pay *ad-valorem* court fees u/S 7(iv)(c) whereas if non-executant seeking declaration of sale deed as void, then he has to pay as per second proviso to Section 7(v)(a) of the Act of 1870: *Godhan Singh Vs. Sanjay Kumar Singhai, I.L.R. (2020) M.P. *4*

– Section 7(iv)(c) & 7(v)(a) – See – Hindu Minority and Guardianship Act, 1956, Section 8(1) & (2): *Godhan Singh Vs. Sanjay Kumar Singhai, I.L.R. (2020) M.P. *4*

– Section 7(vi) and Suits Valuation Act (7 of 1887), Section 3 – Ad Valorem court fee – Suit in respect of agricultural land – In a suit for enforcing the right of pre-emption, the plaintiff is required to value the reliefs in respect of the property

wherein the right is claimed – Section 3 of the Suits Valuation Act empowers the State government to frame rules to determine the valuation of land for jurisdictional purpose – By the virtue of Rule 2 & 3 of the Rules framed under the Suits Valuation Act, the plaintiffs are required to value the relief at 20 times the land revenue – Petition allowed: *Radhey Shyam Vs. Bhure Singh, I.L.R. (2016) M.P. 2214*

– Section 12 and Civil Procedure Code (5 of 1908), Section 107(1) – Court Fees – Adjudication – Held – U/S 12 of the Act of 1870, first appellate Court is competent to adjudicate the issue regarding court fees payable in appeal as well as in suit – Appellate Court u/S 107(1) CPC is required to decide the appeal on merits but CPC is a procedural law and Court Fees Act is a substantive law for payment of Court fees, thus substantive law will prevail over procedural law – Payment of Court fees cannot be avoided on the ground that issue of valuation of Court fees is pending before Court – First appellate Court rightly decided the issue of Court fees: *Badrilal (deceased) through L.Rs. Nirmala Vs. Akash, I.L.R. (2019) M.P. 1076*

– Section 16 – Refund of Court Fee – Held – Section 16 provides for refund of court fee in case dispute is settled in terms of Section 89 C.P.C. and since in the present case suit was not decided in terms of requirements of Section 89, plaintiff not entitled to refund of court fee – Petition dismissed: *Shriji Ware House Vs. M.P. State Civil Supplies Corporation Ltd., I.L.R. (2016) M.P. 2779*

– Section 16 – Refund of Court fee – Matter referred to arbitration in terms of agreement – If an appropriate application is filed before the trial Court for refund of Court fees, then the same will be considered and decided by the trial Court on its own merit: *Bright Drugs Industries Ltd. (M/s.) Vs. Punjab Health System Corporation (M/s.), I.L.R. (2017) M.P. 141*

– Section 35 – Petition against the order allowing the application filed u/s 35 of the Court Fees Act seeking exemption from payment of ad valorem Court fees, on the ground that trial court has allowed the same merely on the basis of income certificate issued by Tehsildar without holding any enquiry – Held – Trial court has not committed any illegality in allowing the application by considering prima facie circumstances – The income certificate has been issued by Tehsildar under its authority and no document contrary to that has been placed on record by the petitioner – However, income certificate issued by Tehsildar cannot be treated as gospel truth – Trial court directed to frame issue with regard to income and decide the same alongwith other issues on appreciation of evidence: *Mohd. Ali Vs. Munnilal Ahirwar, I.L.R. (2016) M.P. 979*

– Article 17(iii) of Second Schedule – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Vinod Kumar Sharma Vs. Satya Narayan Tiwari, I.L.R. (2018) M.P. 190*

– Article 17(iii) of Second Schedule & Section 7(iv)(c) – Ad Valorem Court fees – Plaintiff filed a suit seeking declaration of a sale deed to be void – Court directed plaintiff to pay ad valorem Court fees – Challenge to – Held – Plaintiff is neither the executant nor a party to the sale deed – Plaintiff seeking simplicitor declaration that instrument is void and not binding on him – Not required to pay ad valorem Court fee – Fixed Court fee under Article 17(iii) of Second Schedule of Court Fees Act will be payable – Impugned order set aside – Petition allowed: *Gangesh Kumari Kak (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. *24*

– Schedule I Article 1–A [As substituted by Court Fee (M.P. Amendment) Act (6 of 2008), w.e.f. 2-4-2008] – Amendment is a beneficial legislation – Benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02-04-2008 – Be it in the form of plaint before the subordinate court or memorandum of appeal before the High Court, as the case may be – Being beneficial court fee regime – Reference answered accordingly: *Technofab Engineering Ltd. (M/s.) Vs. Bharat Heavy Electricals Ltd., I.L.R. (2016) M.P. 651 (FB)*

CRIME VICTIM COMPENSATION SCHEME, M.P., 2015

– Section 2(j) & 2(k) – See – Criminal Procedure Code, 1973, Section 357-A: *Praveen Banoo (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. *20*

CRIMINAL COURTS AND COURT-MARTIAL (ADJUSTMENT OF JURISDICTION) RULES, 1952

– Rule 3 & 4 – See – Criminal Procedure Code, 1973, Section 475: *Karamjeet Singh Vs. State of M.P., I.L.R. (2017) M.P. 946*

CRIMINAL COURTS AND COURT MARTIAL (ADJUSTMENT OF JURISDICTION) RULES, 1978

– See – Criminal Procedure Code, 1973, Section 475: *Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P., I.L.R. (2017) M.P. 1275*

CRIMINAL JURISPRUDENCE

– Retributive Punishment & Utilitarian Punishment – Discussed & explained: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Street Harassment – Discussed & explained: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Theory of Broken Windows & Theory of Marginal Deterrence – Discussed & explained: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

CRIMINAL PRACTICE

– Absconsion of Accused – Mere absconsion may not be indicative of guilty mind, but in light of surrounding circumstances, absconsion immediately after incident would assume importance – Motive – Motive attributed to the appellant for committing offence may not be very strong, however, even assuming that prosecution failed to prove, even then on the basis of circumstantial evidence, accused can be convicted: *Bhagwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 564 (DB)*

– Acquittal – Interference – Held – When High Court draws acquittal, there is double presumption in favour of accused – If view of High Court is reasonable and based on material on record, this Court should not interfere unless there are compelling and substantial reasons to do so and if ultimate conclusion of High Court is palpably erroneous, constituting substantial miscarriage of justice: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

– Adverse Inference – Held – In the FSL report, human blood has been found on the knife and clothes of appellant – Appellant failed to explain the origin of blood stains on his clothes which he was wearing at the time of incident and on the knife recovered from him – Adverse inference can easily be drawn against him: *Shrawan Vs. State of M.P., I.L.R. (2018) M.P. 740 (DB)*

– Against Acquittal – If two views are possible, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused is to be adopted: *Gabbar Singh Vs. State of M.P., I.L.R. (2016) M.P. 3091 (DB)*

– Appeal against Acquittal – Evidence – If there are two views possible as per the evidence, one in favour of accused and other against the accused, in such a condition, Court cannot opt the view which is against the accused: *State of M.P. Vs. Ramesh Kumar, I.L.R. (2018) M.P. 1188 (DB)*

– Appeal Against Acquittal – Held – In appeal against acquittal, appellate Court would not ordinarily interfere with order of acquittal but where the order suffers serious infirmity, this Court can re-appreciate the evidence and reasoning upon which acquittal is based: *State of M.P. Vs. Chhaakki Lal, I.L.R. (2019) M.P. 507 (SC)*

– Appreciation of Evidence – Held – While appreciating evidence in criminal case, court should bear in mind that it is not the quantity but the quality of evidence that is material – It is the duty of the Court to consider the trustworthiness of witness and to assess the same in prudent manner as to whether the same inspires confidence

so as to accept and act upon before convicting an accused: *Shanker Vs. State of M.P., I.L.R. (2018) M.P. 2301 (SC)*

– Bail – Ground of Parity – Factors relevant for consideration, discussed and enumerated: *Neeraj @ Vikky Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1796*

– Bail – Grounds – Factors relevant for consideration, discussed and enumerated: *Jeetu Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. *54*

– Benefit of Acquittal to Non Appealing Accused – Held – Apex Court concluded that where the Court disbelieves the entire incident/case, then the benefit of the same should be extended to the non-appealing accused – It is well established principle of law that non-appealing accused should not suffer only because of the fact that he could not file the appeal: *Aatamdas Vs. State of M.P., I.L.R. (2019) M.P. *1*

– Benefit of Doubt – Held – Where on the evidence, if two possibilities are available or open, accused is entitled for benefit of doubt: *In Reference Vs. Ankur @ Nitesh Dixit, I.L.R. (2019) M.P. *68 (DB)*

– Burden of Proof – Held – It is a cardinal principle of criminal jurisprudence that guilt of accused must be proved beyond all reasonable doubts – Burden on the prosecution is only to establish its case beyond reasonable doubt and not all doubts: *Pooran @ Punni @ Bhure Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 1547 (DB)*

– Capital Punishment – Rarest of Rare Cases – Aggravating and Mitigating Circumstances – Enumerated and explained – Reformative theory of punishment, social justice, propositions, weightage, determinations, exercise of judicial discretion, issue of assigning reasons in a death sentence, affording opportunity to accused, discussed and explained: *Anand Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. 1470 (DB)*

– Circumstantial Evidence – Death Penalty – Held – It would be totally imprudent to lay down an absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence – Such standard would be ripe for abuse by seasoned criminals who always make sure to destroy direct evidence: *Ravishankar @ Baba Vishwakarma Vs. State of M.P., I.L.R. (2020) M.P. 289 (SC)*

– Closure Report – Notice to Complainant – Held – After the closure report is filed, the Court shall issue notice to the complainant: *Vijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 1959*

– Closure Report – Plea of alibi – Consideration – Held – Closure report has been accepted only on basis of plea of *alibi* – Magistrate had no occasion to

record the evidence of accused persons – Closure report accepted without application of judicial mind and beyond the judicial ethics – Impugned order set aside – Revision allowed: *Patiram Kaithele Vs. State of M.P., I.L.R. (2019) M.P. 1899*

– Closure Report – Power and duty of Magistrate in case a part charge-sheet is submitted before it or a final report is filed – The Magistrate neither can accept a part charge-sheet after a partial investigation nor can permit any police officer to re-investigate the matter for few accused persons – Held – It is the duty of the Magistrate while considering the final closure report to hear the complainant and he could examine the complainant to record his objections on the closure report: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Cognizance of Offence – Considerations – Magistrate, while taking cognizance, has to satisfy himself about the satisfactory grounds to proceed with the complaint and at this stage the consideration should not be whether there is sufficient ground for conviction – At the stage of taking cognizance, the Magistrate is also not required to record elaborate reasons but the order should reflect independent application of mind by the Magistrate to the material placed before him: *Rajendra Rajoriya Vs. Jagat Narain Thapak, I.L.R. (2018) M.P. 1045 (SC)*

– Complaint Case – Held – After the dismissal of complaint, if complainant challenges the order, then the persons arrayed as accused are required to be heard: *Vijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 1959*

– Conviction – Grounds – Held – Conviction cannot be based on conjectures and surmises to conclude on preponderance of probabilities, the guilt of appellant without establishing the same beyond reasonable doubt: *Gangadhar @ Gangaram Vs. State of M.P., I.L.R. (2020) M.P. 1989 (SC)*

– Court of Magistrate and Court of Session – Same Judge – Held – Proceedings are not vitiated only because the Judge in Session Court is same who heard the matter as Magistrate before committal also – When it is shown that some prejudice is caused to accused, case may be transferred to some other Court – No interference called for: *Pushpa Singh Vs. State of M.P., I.L.R. (2017) M.P. 2265*

– Defence witnesses – Held – Accused can maintain silence on a particular issue, but once he appears as defence witness, then he has to explain each and every circumstances – He loses all the immunities which are available to an accused: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

– Dehati Nalishi & FIR – Held – Merely because minute graphic narration/ details of incident are given in Dehati Nalishi, the same cannot be discarded and the same does not render the prosecution case untrustworthy – In instant case, FIR was

not admitted in evidence and was not proved but the same does not render Dehalti Nalishi unreliable especially when the same assumes the character of FIR and which alone can trigger investigation – Court cannot render the entire investigation otiose: *State of M.P. Vs. Latoori, I.L.R. (2018) M.P. *68 (DB)*

– Delay in Trial – Responsibility of Trial Court – Held – It is the responsibility of the trial Court to secure presence of prosecution witnesses at the earliest and record their statements within the shortest time possible: *Rambahor Saket Vs. State of M.P., I.L.R. (2019) M.P. 214*

– DNA & Ocular Evidence – DNA typing carries high probative value for scientific evidence and is often more reliable than ocular evidence: *Ravishankar @ Baba Vishwakarma Vs. State of M.P., I.L.R. (2020) M.P. 289 (SC)*

– Dying Declaration – Particulars of Accused – In instant case, pet names of accused persons disclosed in dying declaration – Apex Court in AIR 1972 SC 1557 held that dying declaration which does not contain complete names and particulars of persons charged with offence, even though may help to establish their identity, is not of such a nature, on which conviction can be based – It cannot be accepted without corroboration – Dying declaration not a reliable piece of evidence: *Shishupal Singh @ Chhutte Raja Vs. State of M.P., I.L.R. (2018) M.P. 1740 (DB)*

– Enmity – Held – Enmity is a double edged sword – It can be the motive but it can also be a reason to falsely implicate the other side: *Imrat Singh Vs. State of M.P., I.L.R. (2020) M.P. 548 (SC)*

– Evidence – Two Views – Held – If two views are possible on the evidence adduced, the view which is favourable to accused should be adopted: *Sukhdev Vs. State of M.P., I.L.R. (2017) M.P. *163 (DB)*

– Evidence of Doctors – Held – Principle of law is that if there is difference of opinion of doctors about injuries, the evidence of doctor who supports ocular evidence is reliable: *Pintoo @ Lakhan Singh Vs. State of M.P., I.L.R. (2018) M.P. 1223 (DB)*

– Excise Act, M.P. (2 of 1915) – Section 61(1) & (2) and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Limitation for Prosecution – Held – M.P. Excise Act is a special enactment and its provisions shall prevail over the provisions of Cr.P.C. in so far as it relates to limitation of prosecution is concerned – Provisions of general statute would apply only to the effect to which nothing is specified in special enactment: *Ramesh Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *109*

– Extra Judicial Confession – Credibility – Held – There was an extra judicial confession by the accused before his near relative – Confession is absolutely

voluntary and without any compulsion or pressure – Extra judicial confession, if voluntary and true and made in fit case of mind, can be relied upon by the Court: *Anil Pandre Vs. State of M.P., I.L.R. (2018) M.P. 114 (DB)*

– Extra Judicial Confession – Held – Extra judicial confession by appellant was not made under police custody, or was not under any coercion or duress, it was made on his own volition – Such confession supported by testimony of witness makes the appellant liable for conviction: *Girijashankar Vs. State of M.P., I.L.R. (2018) M.P. 2946 (DB)*

– Eye Witnesses – Discrepancies – Held – Power of observation differs from person to person witnessing an attack – While the prime event of attack and weapon are observed by a person, other minute details of number of blows, the distance from which fire was shot might go unnoticed – Truthfulness of evidence of eye witnesses cannot be doubted on ground of minor contradictions and discrepancies: *Balvir Singh Vs. State of M.P., I.L.R. (2019) M.P. 1200 (SC)*

– Eye Witnesses – Interested Witnesses – Held – Although evidence of interested witness is to be considered with care and caution but merely because eye witnesses are closely related/interested to deceased, their testimonies cannot be doubted and their evidence does not necessarily require corroboration before acting upon: *Ramanda @ Yashvant Gond Vs. State of M.P., I.L.R. (2017) M.P. 2489 (DB)*

– FIR – Held – Prompt FIR prevents possibilities of any concocted stories which could be cooked up by the complainant party to falsely implicate the accused persons: *Kishori Vs. State of M.P., I.L.R. (2019) M.P. 1757*

– FIR – Jurisdiction of Police – Held – There cannot be two FIRs for the same offence – During investigation, if police finds involvement of petitioners in the offence, it has the jurisdiction to implicate those persons as accused – In instant case, society is not required to lodge separate FIR against petitioners: *Vidhya Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1552*

– Hostile Witness – Testimony – Held – Testimony of the hostile witness cannot be totally discarded merely on the ground that he been declared hostile – It can be used for the purpose of corroboration of testimony of other witnesses: *Prabhulal Vs. State of M.P., I.L.R. (2018) M.P. 782 (DB)*

– Identification of Accused – False implication – Held – As per FIR, 200 persons attacked the complainant party – Injured eye witnesses have not identified each accused persons including appellants – Against some appellants, nothing has been mentioned and their involvement is denied – False implication of any accused cannot be ruled out in such circumstances: *Rai Singh Vs. State of M.P., I.L.R. (2017) M.P. *159 (DB)*

– Injuries – Explanation – Held – Injuries sustained are minor, thus non-explanation of the same is not fatal to prosecution case: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

– Injuries on Person of Accused – Held – Several injuries and presence of smegma on private part of accused shows that accused had intercourse with child and that too forcibly – Non-explanation of such injuries shows that accused subjected the young girl of 4 yrs. to his brute force and lust: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Interested Witness – Held – Evidence of son of deceased is corroborated effectively by other eye witnesses and there is no omission, contradiction or inconsistencies, thus no reason to disbelieve him or reject his testimony just on the pretext that he is interested witness: *Girijashankar Vs. State of M.P., I.L.R. (2018) M.P. 2946 (DB)*

– Interference in Order of Acquittal – Held – It is well settled that while dealing with an appeal against acquittal, Appellate Court must be extremely cautious and very slow in interference – Presumption of innocence gets further strengthened and established by an order of acquittal which must not be readily and easily disturbed: *Halke Ram Vs. State of M.P., I.L.R. (2018) M.P. 2664 (SC)*

– Investigation when complete – Investigation would be complete if the Investigation Officer would be in a position to opine that crime was found committed and hence, charge-sheet is filed with the final conclusion of the Investigation Officer: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Issuing Summons – Duty of the Court – It is expected of the Court to go through the charge sheet, the documents and the statements of the witnesses u/S 161 Cr.P.C. and examine if necessary to take cognizance of the offences stated in the charge sheet, summon any or all of the persons arrayed as accused by the police – Where, the trial Court is of the opinion that there is some evidence which may reveal a slight suspicion against a person, it ought to take recourse of the procedure u/S 156(3) Cr.P.C. and remand the matter to the police for further investigation, rather than taking cognizance and summon a person as an accused where the evidence on record prima facie reveals only a peripheral presence of such a person: *Rajesh Kumar Gupta Vs. State of M.P., I.L.R. (2017) M.P. 989*

– Jurisdiction Of Court – Place of Trial – Petitioner purchased an APPLE i-phone from Bhopal which was subsequently got repaired at Lucknow and Gurgaon – Petitioner lodged a FIR at Bhopal – Held – Ordinarily that Court would get the jurisdiction to try the offence within whose jurisdiction the offence was committed – Record shows that mobile sim tray was replaced at Lucknow and petitioner came to

know about the same at Gurgaon – Courts that would have the jurisdiction to try the offence would either be the Court at Lucknow where the act was done or the Court at Gurgaon where the effect ensued – No part of the offence has been committed in the State of Madhya Pradesh – Investigation against the petitioners and resultant proceedings before the trial Court at Bhopal has no legal basis and are hereby quashed: *R. Shrinivasan Vs. State of M.P., I.L.R. (2017) M.P. 738*

– Marg Intimation and Statement on Oath – Variance – Held – Marg intimation is a prior statement given by witness – If such statement is at variance with statement on oath, witness was required to be confronted but no such attempt has been made – In absence thereof, statement on oath in Court would be relevant to appreciate evidence of prosecution: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Medical & Ocular Evidence – Inconsistency – Effect – No injury on the head of the deceased which may be caused by sharp object – Witnesses stated that appellant/accused was armed with farsi and assaulted on head of the deceased – Held – Such contradiction is immaterial as there is injury on the head of the deceased and it may be possible that at the time of incident, weapon was not in the sharp condition, it might have been in blunt condition – It cannot be said that medical evidence is inconsistent with ocular evidence: *Prabhulal Vs. State of M.P., I.L.R. (2018) M.P. 782 (DB)*

– Medical Insanity & Legal Insanity – Held – To prove insanity or unsoundness of mind of accused, his previous as well as post mental status may be considered – Every insanity is not legal insanity – Person may be suffering from medical insanity but it may not be sufficient to treat the same as legal insanity: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Medico Legal Case (MLC) – Procedure, duties and jurisdiction of Medical Officer discussed and explained: *Mala @ Gunmala Lodhi (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2160*

– Minor Contradictions –Held – Minor contradictions in statement of witnesses about use of a particular weapon by appellants will not cause any dent on credibility of their statements – Apex Court concluded that where several witnesses are examined, there are bound to be minor contradictions – Where a number of persons assaulted at once, some contradictions as to who used which weapon is likely to happen – Evidence of eye witnesses cannot be rejected on this ground: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Motive – Held – Case is based on direct evidence and not on circumstantial evidence and hence it is not compulsory for prosecution to prove motive of accused

– Only for absence of motive, direct evidence cannot be ignored: *State of M.P. Vs. Keshovrao, I.L.R. (2017) M.P. 2480 (DB)*

– Non-recovery of Weapon – Effect – Held – Mere non recovery of weapon would not falsify the entire prosecution case where there is ample unimpeachable evidence available: *Munna Singh Vs. State of M.P., I.L.R. (2018) M.P. 127 (DB)*

– Ocular and Medical Evidence – Contradiction – Effect – Benefit of Doubt – Held – It was alleged that accused Ghanshyam and Naresh caused injuries to deceased by using "Ballam" but doctor who performed postmortem of deceased deposed that there were no injuries noticed by him which were alleged to be caused by "Ballam" – There is no evidence of prosecution witnesses that Ballam was used as a blunt weapon – If there is contradiction between medical and ocular evidence and when medical evidence makes ocular evidence improbable, that becomes a relevant factor in evaluation of evidence – Ocular evidence could not be relied over and above medical evidence – Out of all accused persons, accused Ghanshyam and Naresh are entitled to benefit of doubt – Conviction and sentence of rest of accused persons are hereby confirmed: *Shankar Vs. State of M.P., I.L.R. (2018) M.P. 143 (DB)*

– Ocular and Medical Evidence – Contradiction – Effect – Held – Where there is a contradiction between the ocular evidence and medical evidence, the ocular testimony of a witness has greater evidentiary value than medical evidence – When medical evidence makes the ocular evidence improbable, that becomes a relevant factor in the process of evaluation of evidence –In the present case, testimony of the eye witnesses are trustworthy – Entire evaluation of ocular evidence and medical evidence constituted common object to murder the deceased persons: *Munna Singh Vs. State of M.P., I.L.R. (2018) M.P. 127 (DB)*

– Ocular Evidence/Fsl Report – Corroboration – Ocular evidence of prosecutrix and her parents is wholly supported by chemical examination of the seized articles which relates the accused with the crime – FSL report also clearly proves the presence of blood and semen on the seized articles for which testimony of prosecutrix alone is proved trustworthy: *State of M.P. Vs. Siddhamuni, I.L.R. (2018) M.P. 121 (DB)*

– Order of Acquittal – Interference – Held – It is settled law that if trial Court after due appreciation of evidence comes to conclude finding of acquittal then normally if findings are not perverse, it should not be interfered by Appellate Court: *State of M.P. Vs. Mukesh Kewat, I.L.R. (2019) M.P. 489 (DB)*

– Particulars of Assault and Injuries – Held – When four persons assault the deceased together, it is not possible for witness to exactly mark as to which accused was assaulting with which weapon and on which part of the body of deceased

– If presence and participation of four appellants is established, particulars of assault or any inconsistency in those particulars are immaterial: *Shishupal Singh @ Chhutte Raja Vs. State of M.P., I.L.R. (2018) M.P. 1740 (DB)*

– Plea of Alibi – Held – Plea of alibi has to be proved beyond reasonable doubt – Burden of proof is heavily on accused – Plea of alibi cannot be proved by preponderance of probabilities: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

– Plea of Alibi – Afterthought – Held – Presence of accused not challenged during cross-examination of main eye witnesses and it is only after concluding prosecution evidence, the plea of alibi was taken which makes it clear that it is an afterthought and thus not believable: *Chauda Vs. State of M.P., I.L.R. (2019) M.P. 471 (DB)*

– Police Closure Report – Procedure – Held – Police officers deliberately retained the closure report on frivolous ground with solitary intention to give undue advantage to accused and did not file it before Court – Magistrate was also aware of the fact of preparation of closure report by police but did not direct them to file the same – Police cannot keep closure report in police station – Procedure adopted by Magistrate is in utter disregard to provisions of Cr.P.C. – Impugned order set aside – Matter remanded to Magistrate for decision afresh – Application allowed: *Vijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 1959*

– Previous Enmity – Statement of Eye Witness – Held – Enmity is a double edged weapon where a person can be falsely implicated or he can be assaulted for that reason – Enmity by itself, is not sufficient to discredit the eye witness: *Shishupal Singh @ Chhutte Raja Vs. State of M.P., I.L.R. (2018) M.P. 1740 (DB)*

– Quantum of Sentence – Duty of Court – Held – Awarding of just and adequate punishment to wrong doer in case of proven crime remains a part of duty of Court – Punishment to be awarded, has to be commensurate with gravity of crime as also with relevant facts and attending circumstances: *State of M.P. Vs. Suresh, I.L.R. (2019) M.P. 1348 (SC)*

– Recovery of Article – Inference against Accused – Held – In case of recovery of article, if person accused of committing offence other than theft (such as murder), there are tests to establish the offence – Tests enumerated: *Sonu @ Sunil Vs. State of M.P., I.L.R. (2020) M.P. 1816 (SC)*

– Related & Interested Witness – Held – 'Related' is not equivalent to 'interested' – Witness may be called 'interested' only when he derives some benefit from result of a litigation or in seeing the accused person punished – No hard and fast

rule that evidence of 'interested' witness cannot be taken into consideration, burden is on Courts to consider it with care, caution and circumspection – Relationship can never be a factor to effect credibility of witness as it is not always possible to get independent witness: *Ajay Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2098 (DB)*

– Related witness – Credibility – Held – Discarding the evidence of the prosecution witness at the outset only on the ground of his being a relative of deceased, was uncalled for – Findings recorded by Trial Court regarding evidentiary value of such deposition of witness is ex-facie wrong and cannot be sustained – Recovery of mobile hand set with suspected IMEI number from Athar Ali stands proved: *Laxmi Verma (Smt.) Vs. Sharik Khan, I.L.R. (2017) M.P. 1978 (DB)*

– Related Witnesses – Held – Evidence of prosecution witnesses cannot be discarded merely on ground that they are related witnesses – Injuries sustained by injured persons fully corroborates the ocular evidence: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

– Remand of Case – Remand of the case where charge is wrongly framed – Held – No need to remand the case though the charge u/S 376-A was found to be not sustainable – The accused was found properly convicted u/S 302 & 376(2)(i) of IPC – It cannot be said that unless a charge u/S 376-A of IPC is proved, the accused/ appellant cannot be effectively punished: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Review and Recall of Order – Held – Recall of order and review of order are two different things – In present case, Magistrate directed police to register FIR and file final report – On next date of hearing, Magistrate dismissed the complaint holding that FIR has been registered and therefore there is no need to proceed further – Such order amounts to review of an order which could not have been done: *Dipti Kushwah Vs. Vijay Shankar Tiwari, I.L.R. (2018) M.P. *90*

– Seizure Memo – Mobile Phone/Memory Card – Held – Seizure memo is not expected to show the contents of the memory card i.e. recording – Submission that seizure memo does not state that it contains recording, is of no consequence: *Lokesh Solanki Vs. State of M.P., I.L.R. (2020) M.P. 1212*

– Sentencing – Concept – Crime Test, Criminal Test & Comparitive Proportionality Test – Discussed and explained: *State of M.P. Vs. Udham, I.L.R. (2020) M.P. 309 (SC)*

– Sentencing Policy – Discussed and explained: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Sentencing Policy – Object – Held – Twin objective of sentencing policy is deterrence and correction – What sentence would meet ends of justice depends on facts and circumstances of each case – For awarding appropriate sentence, Court must consider the gravity of offence, the nature and motive of crime, the social interest and conscience of the society and all other attendant circumstances: *Bhagirath Vs. State of M.P., I.L.R. (2020) M.P. 210*

– Statements of Hostile Witnesses – Held – It is well settled legal position that evidence of hostile declared prosecution witnesses could not be discarded totally, but that part of their depositions could be taken into consideration which is supported by other evidence available on record: *Madhav Prasad Vs. State of M.P., I.L.R. (2017) M.P. 1934 (DB)*

– Subsequent Development – Any subsequent development in criminal proceeding cannot absolve a person from his criminal liability – It can be seen only at the relevant time when the offence was allowed to have been committed: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Suggestion by Defence Counsel – Scope & Effect – Held – Accused cannot be convicted on basis of suggestions given by defence counsel during cross-examination – Accused can be convicted only on basis of evidence produced by prosecution: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

– Suspicion – Held – Suspicion howsoever may be grave and strong cannot take place of proof of commission of crime: *Ratiram Gond Vs. State of M.P., I.L.R. (2019) M.P. 644 (DB)*

– Territorial Jurisdiction – Held – Apex Court concluded that order of taking cognizance by Magistrate cannot be quashed by High Court on ground that Magistrate had no jurisdiction to try the case – Power to take cognizance and to try the case is different: *Nike India Pvt. Ltd. Vs. My Store Pvt. Ltd., I.L.R. (2019) M.P. 1903*

– Test Identification Parade – Held – In a matter, Apex Court concluded that, in TIP, number of persons should be "reasonably large" – In instant case, 4 persons participated in TIP, cannot be termed as improper or contrary to direction of Apex Court: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Testimony of Police Officer – Credibility – Held – Testimony of the Inspector cannot be viewed with suspicion simply because panch witnesses have turned hostile or because he is a police officer, especially in a case where his testimony is corroborated by other police witnesses: *Munna Khan Vs. State of M.P., I.L.R. (2018) M.P. 960*

– Testimony of Witnesses – Contradictions and Omissions – Effect – Held – It is true that there are some contradictions and omissions in the testimony of witnesses but they do not affect the whole prosecution case – Such contradictions and omissions are found in testimony of villagers which indicate that they were not making up any false story but were narrating the incident by memory: *Sangram Vs. State of M.P., I.L.R. (2017) M.P. 2243*

– Weapon of Crime – Held – Apex Court has concluded that non explanation of human blood on weapon of crime is a circumstance against the accused – In present case, non-explanation of blood group on the seized weapon of crime would not be fatal for prosecution: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

CRIMINAL PROCEDURE CODE, 1973 (2 OF 1974)

– Amendment of 2007 – See – Penal Code, 1860, Section 420, 467, 468, 471, 120-B: *Laxmi Thakur (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 199*

– Chapter VII A – See – Protection of Women from Domestic Violence Act, 2005, Section 28: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Sections 2(d), 2(wa), 372 & 378(4), Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009) and Penal Code (45 of 1860), Sections 323/34, 341 & 506(2) – Victim – Appeal – Case instituted on complaint – Complainant has right to file appeal against acquittal – Provision u/s 378(4), Cr.P.C. applicable – Whereas case instituted on police report victim can appeal against such order of acquittal, or convicting for a lesser offence or imposing inadequate compensation under amendment inserted under the proviso of Section 372 Cr.P.C: *Meena Devi (Smt.) Vs. Omprakash, I.L.R. (2016) M.P. 1167*

– Section 2(g) & (h) – Inquiry & Investigation – Held – "Inquiry" mean every inquiry other than a trial conducted under the Cr.P.C. by a Magistrate or court whereas "investigation' denotes all the proceedings under the Cr.P.C. for collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) authorized by a Magistrate in this behalf – Dismissal of a complaint u/S 203 Cr.P.C. does not contemplate the word "trial" and it merely contemplates the word "inquiry" and "investigation" u/S 202 Cr.P.C: *Buddh Singh Kushwaha Vs. Umed Singh, I.L.R. (2018) M.P. 988 (DB)*

– Section 2(h) – Investigation – Held – Sending the mobile phone to FSL in order to retrieve its recording is a part of investigation: *Lokesh Solanki Vs. State of M.P., I.L.R. (2020) M.P. 1212*

– Section 2(h) and Constitution – Article 21 – – Police Investigation – Held – Investigative powers of police are not merely an "Authority" but also a "Responsibility – Fair investigation is one which is done for purpose of unearthing the truth and not for sole purpose of securing conviction – Fair trial entails to considering the defence of the accused and investigating the same to ascertain if the allegations against accused is true or not – If accused provides credible material to police to investigate and ascertain his innocence, it is bounden duty of police to investigate into his version – Ignoring the same would violate his rights under Article 21 of Constitution: *Utkarsh Saxena Vs. State of M.P., I.L.R. (2019) M.P. 653*

– Section 2(u) & 24 – Public Prosecutor – Term "Any Person" – Held – The term "any person" means any person to whom instructions have been issued by the Public Prosecutor and will include Government Advocate, Deputy Government Advocate, Panel Lawyer or any other third person – All Government Advocates appearing on behalf of State are deemed to be Public Prosecutor: *Pawan Kumar Joshi Vs. State of M.P., I.L.R. (2020) M.P. 352*

– Section 2(u) & 24 – See – Constitution – Article 226: *Pawan Kumar Joshi Vs. State of M.P., I.L.R. (2020) M.P. 352*

– Section 24 – Appointment of Public Prosecutor – Cancellation – Grounds – Petition against the cancellation of appointment order of petitioner being selected as Public Prosecutor and further appointment of Respondent No.3 – Held – State Government in its reply has neither assigned any reason nor explained, what were the unavoidable reasons or probable cause for cancellation of appointment order of petitioner – Affidavit also does not disclose any reasons which required cancellation of petitioner's appointment after due approval by Law Secretary – Further held – A fair, reasonable and non-discriminatory process of appointment is the demand of the rule of Law – Arbitrariness has no place in a polity governed by rule of law, Article 14 of the Constitution strikes at arbitrariness in every State action – Authorities directed to draw a fresh panel of lawyers in terms of the Supreme Court guidelines: *Umesh Kumar Sharma Vs. State of M.P., I.L.R. (2017) M.P. 1403*

– Section 24 and Penal Code (45 of 1860), Section 302/34 – Appointment of Special Public Prosecutor – On an application by the complainant, Special Public Prosecutor was appointed – Petition against – Held – State Government has taken a decision on the basis of report furnished by District Magistrate and Superintendent of Police and there is no allegation against these officers – Relationship of complainant and Special Public Prosecutor is not established – No allegation about competency of Special Public Prosecutor nor it could be established that what prejudice will be caused to the petitioner/accused – Proper procedure has been adopted by the State Government for appointment – State was well within its rights in appointing a Special

Public Prosecutor – Petition dismissed: *P.S. Thakur (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 562*

– Section 24(8) – Appointment of Special Public Prosecutor – Remuneration – Grounds – Held – Section 24(8) Cr.P.C. empowers the State Government to appoint Special Public Prosecutor – Such power is to be exercised judiciously and for valid reasons – State cannot appoint a Special Public Prosecutor and replace the duly appointed public prosecutor without application of mind, merely on a wish of a party, or merely on asking of the complainant – In the present case, no specific reasons were assigned to show need of Special Public Prosecutor, merely mentioning that case is treated to be a special case, is not sufficient – Further held – It is settled law that Special Public Prosecutor should ordinarily be paid from funds of State and only in special case, remuneration can be collected from private sources – Impugned order states that remuneration of Special Public Prosecutor will be paid by complainant, cannot be approved – Impugned order not sustainable and set aside – Writ Petition allowed: *Pawan Kumar Saraswat Vs. State of M.P., I.L.R. (2018) M.P. *19*

– Section 24(8) and Constitution – Article 226 – Scope & Jurisdiction – Appointment of Special Public Prosecutor – Locus to Challenge – Held – Petitioner is one of the accused and have no locus standi to challenge/question the appointment made by State Government under statutory provisions – Such exercise of statutory power by State is impeccable and does not make the appointment by itself vulnerable in absence of any malice either on facts or in law – Further Held – Jurisdiction under Article 226 is subjected to self restricted limitations – This Court does not sit in appeal over a decision of a State or an authority to address on merits of the decision – It only ensures that decision making authority was competent as per law and the decision making process was free from arbitrariness, unreasonableness, bias, malice or perversity – Petition dismissed: *Dev Raj Kataria Vs. State of M.P., I.L.R. (2017) M.P. *153*

– Section 24(8) & 25(1) – Appointment of Special Public Prosecutor – Principal Secretary of Law Department received a complaint, which was duly sanctioned at various high levels – Order appointing Special Public Prosecutor was passed – It's a policy decision of the State Government after getting sanction from high levels – Impugned order cannot be found any fault with – No prejudice is caused to accused/petitioner by appointment of Special Public Prosecutor – Petition dismissed: *Bhramdutt Vs. State of M.P., I.L.R. (2016) M.P. 1050*

– Section 29 & 437(6) – Applicability – Held – Relief u/S 437(6) Cr.P.C. can only be availed of in trials by a Magistrate and not in Sessions Trials – Offences triable by Magistrate are not grave offence which shock the human conscience and thus Section 29 Cr.P.C. also clarifies that Court of Magistrate are meant for the trial

of minor offences: *Pramod Kumar Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1329*

– Section 31 & 427 – Sentence – Held – In respect of an offender, where there are different transactions, different crime numbers and cases have been decided by different judgments, concurrent sentences cannot be awarded u/S 427 Cr.P.C. – Appellant is a habitual offender and looking to gravity of offences and criminal past, prayer for concurrent running of sentences rejected – Application dismissed: *Prakash Mehar (Balai) Vs. State of M.P., I.L.R. (2018) M.P. *94*

– Section 36 – Whether supervision report under Section 36 of Cr.P.C. is a part of investigation – Held – If investigation is done by the Investigation Officer having power of investigation and if any superior officer gives supervision report under Section 36 of Cr.P.C., then it cannot be considered as a part of investigation: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Section 41 – Arrest – Held – The scope for issuing a direction to arrest the accused persons is limited – Apex Court held that Section 41 gives discretion to the police officer to arrest any person in the situation enumerated in the section and since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence – Since an arrest is in the nature of encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised: *Ritesh Inani Vs. State of M.P., I.L.R. (2017) M.P. 1409*

– Section 41 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 41 & 41A – Cognizable offences – Arrest without warrant – Limitations of Police officer – Provision of Section 41 r/w 41-A obliges the police officer to first resort to the mode of inviting the petitioner to join investigation by issuing summons rather than straight way going for arrest as per the verdict of Apex Court in the case of Arnesh Kumar Vs. State of Bihar & Another (AIR 2014 SC 2756): *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

– Section 41A – Notice to appear – Issuance of notice by respondent No. 2 on the complaint of respondent No. 3 u/s 41A of Cr.P.C., requiring the petitioners to appear before him – Assailed on the ground that the police station at New Delhi has no jurisdiction and the same has been issued at the instance of respondent No. 3 under a pre-determined motive – Held – If an information relating to commission of cognizable offence is given preliminary inquiry is to be held by the Investigating Officer before registration of FIR taking into account the nature of dispute between the parties

– Petitioners are directed to appear before SHO, Police Station, Barakhamba, New Delhi on 10th August, 2015 at 11.00 a.m. – Petition is disposed of accordingly: *Vikas Nema Vs. Assistant Commissioner of Police, New Delhi, I.L.R. (2016) M.P. 1349*

– Sections 41-A, 41-B, 41-C, 41-D & 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & 18: *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Section 41(b) – Judicial Enquiry – Held – In the present case, since the investigation is being conducted by an officer of high rank under the supervision of I.G., thus there is no reason to direct the investigation by any other investigating agency other than the competent police officer: *Ritesh Inani Vs. State of M.P., I.L.R. (2017) M.P. 1409*

– Section 53-A – See – Penal Code, 1860, Section 376: *Ramnath Vs. State of M.P., I.L.R. (2017) M.P. 2706 (DB)*

– Section 53-A & 164-A – DNA Test – Credibility – Held – By insertion of Section 53-A and 164-A vide amendment of 2005, DNA profiling has now become a part of statutory scheme and is a must – DNA test is a step towards more Forensic and scientific investigation: *Rajendra Singh Vs. State of M.P., I.L.R. (2019) M.P. *19*

– Section 53-A(4) – DNA Report – Held – Section 53-A(4) provides a procedure and every procedural failure will not vitiate the entire examination – Merely because time and duration of test is not mentioned in the report, it will not vitiate the said report: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Section 57 & 167 – See – Constitution – Article 21, 22(2) & 226: *Chanda Ajmera Vs. State of M.P., I.L.R. (2020) M.P. 1332 (DB)*

– Section 70(2) – Cancellation of Warrant – Personal Appearance of Accused – Trial Court, on absence of petitioner/accused on date of hearing, cancelled the bail bonds and issued non-bailable warrant – Counsel for petitioner filed application u/S 70(2) Cr.P.C. showing cause of absence and praying for cancellation of non-bailable warrant – Trial Court was satisfied with reason of absence but dismissed the application on the ground that accused was not personally present before the Court which is essential for exercising jurisdiction u/S 70(2) Cr.P.C. – Challenge to – Held – Trial Court is well within its rights to issue a non-bailable warrant which cannot be faulted, however, it is advisable that said power be not exercised in a routine or mechanical manner – It will be in the larger interest of justice to examine if presence of accused could be secured for next date by way of a bailable warrant instead, at the first instance – Application for cancellation of warrant cannot be dismissed only on the ground that physical presence of accused is essential as the same is not

necessary u/S 70(2) Cr.P.C. – Further, petitioner remained absent only on one date of hearing – Impugned order set aside – Bail bond and sureties restored – Petition allowed: *Sachin Gupta Vs. State of M.P., I.L.R. (2017) M.P. *100*

– Sections 82, 83, 84, 85, 86 & 438 – Anticipatory Bail – Proclaimed Offender – Effect – Held – Proceedings u/S 82 & 83 Cr.P.C. are transient/interim/ provisional in nature and subject to proceedings u/S 84, 85 & 86 Cr.P.C. – On basis of transient provision, valuable right of personal liberty of an individual at least to seek anticipatory bail cannot be curtailed – Application u/S 438 is maintainable even if person has been declared proclaimed offender u/S 82 Cr.P.C: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

– Section 82 & 438 – Absconding Accused – Anticipatory Bail Application – Maintainability – Held – Even if a person/accused is declared absconder u/S 82 Cr.P.C., anticipatory bail application is maintainable – There is no restriction in law about tenability of application of accused who is absconded or against whom challan has been filed by showing him as "absconded accused": *Rajni Puruswani Vs. State of M.P., I.L.R. (2020) M.P. 1477*

– Section 82 & 438 – Absconder & Proclaimed Offender – Held – As a rule of thumb, it cannot be said that an absconder against whom a proclamation u/S 82 Cr.P.C. is not issued, is not entitled for anticipatory bail – No proclamation issued against applicant – Anticipatory bail cannot be denied on ground that applicant is absconding: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 82 & 438, Penal Code (45 of 1860), Section 306 & 498-A and Dowry Prohibition Act (28 of 1961), Section 3/4 – Anticipatory Bail – Entitlement – Challan filed by prosecution showing applicants as "absconded accused" – Held – Applicants are mother-in-law and father-in-law of deceased – Husband has already been granted bail – Allegations against all accused are the same – Ground of parity available to applicants – No proceedings u/S 82 & 83 Cr.P.C. initiated by Police or trial Court against applicants – Neither any custodial interrogation required nor they have any criminal background – Applicants entitled for bail – Application allowed: *Rajni Puruswani Vs. State of M.P., I.L.R. (2020) M.P. 1477*

– Section 91 – Production of Document – Right of Complainant – Held – Relevant documents in custody of police and were not produced alongwith charge sheet – For consideration of relevancy of such document, complainant has a right to produce the same before Court: *Anchal Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2395*

– Section 91 and Negotiable Instruments Act (26 of 1881), Section 138(b) – Postal receipt of sending notice – Not filed alongwith complaint due to inadvertence

– On record it is available that notice was sent and receipt is available – Infirmity – Can be cured at the time of leading evidence – Document permitted to be taken on record: *Amit Thapar Vs. Rajendra Prasad Gupta, I.L.R. (2016) M.P. 2126*

– Section 91 & 125 – Interim Maintenance – Production of Documents – Held – Husband seeking production of birth certificates of children – Applicant being father has not mentioned the date of birth of children – Application is filed to delay the disposal of application for interim maintenance – However, if at later stage, children are found to be major, maintenance awarded can always be either recovered or adjusted – Wife cannot be compelled to live the life of destitute by giving preference to technical objections – Interim maintenance rightly awarded: *Kedar Vs. Smt. Seema, I.L.R. (2018) M.P. 2973*

– Section 91 and 227/228 – Production of Document – Held – At the stage of framing of charge, accused cannot invoke Section 91 to seek production of any document or submit any document in his possession to prove his defence/innocence – Section 91 do not confer any such right on the accused – Revision dismissed: *T.R. Taunk Vs. State of M.P., I.L.R. (2017) M.P. 3110 (DB)*

– Section 91 & 301(2) – Production of Documents – Application by Private Counsel of Complainant – Locus Standi – Held – Trial Court is under an obligation to consider the prayer of applicant/victim but at the same time, it is essential that the relevant documents be produced before Court through public prosecutor – Applicant directed to file fresh application through public prosecutor – Application disposed: *Anchal Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2395*

– Sections 96, 97, 99 & 100 – See – Penal Code, 1860, Section 302 & 304 Part I: *Dukhiram @ Dukhlal Vs. State of M.P., I.L.R. (2018) M.P. 773 (DB)*

– Section 110 & 122(1)(b) – Forfeiture of Bond – Detention – SDM u/S 110 CrPC directed petitioner to furnish a bond of Rs. 10,000 for maintaining good behaviour for a period of two years – Subsequently, again an offence was registered against petitioner whereby SDM u/S 122(1)(b) directed to forfeit the bond and to recover an amount of Rs. 10,000 from petitioner and directed to detain him in prison till the expiry of period of bond – Challenge to – Held – Invocation of powers of Magistrate u/S 122(1)(b) CrPC was utterly misconceived because the bond that could have been asked for from petitioner and which was ultimately filed by him was related to maintaining good behaviour and not for keeping peace – Petitioner cannot be arrested and sent to jail for remaining period of bond – Further held – Petitioner has not only been arraigned in aforesaid case but after investigation, police also filed a final report against him and if under such circumstances, Magistrate is satisfied that breach has occurred, he need not wait for either framing of charge or trial or conviction – Directing

recovery of Rs. 10,000 was rightly made but direction of custody and detention is unsustainable in the eyes of law and that part of order is hereby set aside – Petition partly allowed: *Meenu @ Sachin Jain Vs. State of M.P., I.L.R. (2018) M.P. *17*

– Section 118 – Child Witness – Held – A child witness is competent witness u/S 118 Cr.P.C.: *Vinay Vs. State of M.P., I.L.R. (2017) M.P. 2752 (DB)*

SYNOPSIS : Section 125

1. Ad-Interim Maintenance

– Section 125 – Ad interim maintenance – Husband retired as a lineman from M.P.E.B. – Pension of Rs. 8,000/- per month – Held – Wife entitled for Rs. 2,500/- per month keeping in view the market price index of food stuffs and other essential things: *Shyama (Smt.) Vs. Laxmi Narayan, I.L.R. (2016) M.P. 562*

– Section 125 – Ad interim maintenance – Relationship of husband and wife in question – Prima facie evidence – Comparison of ration card, education certificate vis-a-vis Voter I.D. card – Held – Ration card, education certificate will prevail over voter I.D. card – Application for ad-interim maintenance allowed: *Shyama (Smt.) Vs. Laxmi Narayan, I.L.R. (2016) M.P. 562*

2. Adverse Inference

– Section 125 and Hindu Marriage Act (25 of 1955), Section 11 – Adverse Inference – Held – In proceedings u/S 11 of Act of 1955, for annulment of marriage, husband has not availed opportunity to lead evidence to show that there was no valid marriage – Application u/S 11 was dismissed which was not further challenged – Adverse inference must be drawn against respondent/husband: *Jyoti (Smt.) Vs. Trilok Singh Chouhan, I.L.R. (2020) M.P. 1837 (SC)*

3. Agreement/Compromise

– Section 125 and Contract Act (9 of 1872), Sections 2(e), 23 & 28 – Agreement – Effect – Held – Even if wife has relinquished her rights to maintenance by executing an agreement with husband, her statutory right to seek maintenance u/S 125 Cr.P.C. cannot be bartered – Further, agreement which restrain her right to file legal proceeding is against public policy and same does not create any hurdle for wife for filing proceeding u/S 125 Cr.P.C: *Afaque Khan Vs. Hina Kausar Mirza, I.L.R. (2019) M.P. 1782*

– Section 125 and Hindu Marriage Act (25 of 1955), Section 13-B – Agreement – Jurisdiction of Court – Held – Right of maintenance is a statutory & continuing right and quantum may vary from time to time, party cannot contract out of the same – Wife cannot bind herself by agreement not to apply for maintenance – Court has jurisdiction to look into circumstances under which such agreement was reached – Jurisdiction of Court is not ousted by such agreement: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

– Section 125 and Hindu Marriage Act (25 of 1955), Section 13-B – Maintenance – Entitlement – Changed Circumstances – Held – Wife received permanent alimony 14 years back, in a compromise u/S 13-B of Act of 1955 – Now circumstances has changed with her needs as per age and rise in cost of living – Income of husband has also increased – Wife entitled to claim enhanced maintenance especially when no restriction is imposed in earlier compromise – Husband granted liberty by trial Court to file consequential amendment in rebuttal – No prejudice to applicant/husband – Revision dismissed: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

– Section 125 & 126 – Compromise – Res Judicata – Ex-parte Order – Opportunity of Hearing – Wife filed an application u/S 125 Cr.P.C. in the year 2005 whereby the same was dismissed in the year 2008 on the ground that wife failed to establish that she was living separately with sufficient reasons – In the year 2011, wife again filed an application u/S 125 Cr.P.C. whereby wife withdrawn the case on a compromise whereby husband submitted that wife received a lump sum amount of

Rs. 5 lacs from him – Subsequently, wife again filed a third application u/S 125 Cr.P.C. whereby husband was proceeded ex-parte and Family Court allowed the application and granted Rs. 3000 pm to wife as maintenance – Challenge to – Held – Principle of *res-judicata* are not attracted – Further, with regard to compromise, order sheet reflects that matter is withdrawn in terms of compromise but terms or particulars of compromise is not mentioned – Further held – With regard to ex-parte proceeds against applicant, remedy u/S 126 Cr.P.C. is available – Court cannot permit bypassing of remedy – Applicant is at liberty to move appropriate application u/S 126 Cr.P.C. before the Court below – No interference is called for – Revision disposed: *Kamal Singh Vs. Savitri Bai, I.L.R. (2017) M.P. 1490*

4. Amendment Application

– Section 125 and Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment Application – Maintainability – Held – No specific bar that provisions of Order 6 Rule 17 CPC are not applicable in cases of 125 Cr.P.C. – Proceedings u/S 125 Cr.P.C. are quasi civil in nature, thereby has ingredients of both civil and criminal – Magistrate can allow amendment application in proceedings u/S 125 Cr.P.C. – Revision dismissed: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

5. Attachment of Salary

– Section 125 – Maintenance – Whether future salary could be ordered to be attached to meet out the maintenance amount – Held – Future salary is not tangible corporeal property available for seizure – Hence cannot be attached for realization of arrear as well as current maintenance: *Anil Jain Vs. Shilpa Jain, I.L.R. (2016) M.P. 243*

6. Children From Earlier Marriage/Entitlement

– Section 125 – Children From Earlier Marriage – Entitlement of Maintenance – Both parties had separate unsuccessful marriages in past – They both had children from their earlier marriages – They got married with each other – Subsequently, wife filed application u/S 125 Cr.P.C. seeking maintenance for herself and for her daughter (from earlier marriage) – Family Court granted Rs. 10,000 pm to wife and Rs. 7000 pm to daughter – Challenge to – Held – The word "his" appearing in the section would include only the person who procreates, begets or brings forth offspring – It will not include a child of another father or mother – In the present case, daughter is from 1st marriage of wife and not of the applicant – Child of another have no right to claim maintenance – Family Court erred in awarding maintenance to daughter – Order awarding maintenance to daughter set aside – Revision partly allowed: *Pradeep Jain Vs. Smt. Manjulata Jain Modi, I.L.R. (2018) M.P. 1799*

7. Cruelty/Desertion/ Sufficient Reason to Live Separately

– Section 125 – Cruelty – Delayed Police Report – Held – Regarding misbehaviour and cruelty, generally wife does not lodge a report so that situation should not aggravate thinking that some day behaviour would change and she will tend to live in her matrimonial home, but when things go out of control and become intolerable, wife takes the drastic step of lodging report against husband finding no chance of any reconciliation: *Nirmala Dhurve (Smt.) Vs. Ramgopal, I.L.R. (2017) M.P. 1972*

– Section 125 – Cruelty – Held – Cruelty does not necessarily mean cruelty in connection with dowry or any property, any sort of physical cruelty would be sufficient – Sufficient reason to live separately has to be considered by the behaviour of husband and if he continuously behaves in a cruel manner by harassing mentally or physically, then wife is not expected to continue living with husband: *Anju Mishra (Smt.) Vs. Arun Mishra, I.L.R. (2018) M.P. 2549*

– Section 125 – Maintenance – Cruelty – Desertion – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Wife filed a complaint under Domestic Violence Act which was later compromised – Subsequently, she filed a complaint u/S 498-A IPC, hence it is incorrect to say that in last 6 years wife did not lodge any report or complaint against husband – Wife suffering from disease of fits and husband is not providing any maintenance when she need it the most – Wife entitled for maintenance – Husband directed to pay Rs. 2000 p.m. to wife as maintenance from date of impugned order of family Court alongwith Rs. 3000 as cost of present revision – Revision allowed: *Nirmala Dhurve (Smt.) Vs. Ramgopal, I.L.R. (2017) M.P. 1972*

– Section 125 – Maintenance – Entitlement – Living separately without reasonable reason – Cruelty – Wife's application for maintenance dismissed from Courts below on the ground of living separately without reasonable reason – Challenge to – Held – Harassment/cruel behaviour by husband under guidance and provocation by his sister and their unwarranted excessive interference appears to be correct – Husband's sister also filed FIR against wife and her brother, thus creating all sorts of trouble for wife to lead peaceful married life – Wife within her rights to live separately from husband – Wife entitled for maintenance from husband – Application allowed: *Anju Mishra (Smt.) Vs. Arun Mishra, I.L.R. (2018) M.P. 2549*

– Section 125 – Scope – Held – In a proceeding u/S 125 Cr.P.C., it is not necessary for Court to ascertain as to who was in wrong between husband and wife – Specific allegation against husband regarding demand of dowry – Husband stated that he divorced his wife – Sufficient reason to live separately: *Mohd. Naseem Vs. Jainav Fatima, I.L.R. (2019) M.P. *55*

– Section 125 – Sufficient Cause to Live Separately – Held – Respondent is a divorced wife where Section 125 (4) does not apply – Wife not required to explain any reasonable cause to live separately from husband: *Afaque Khan Vs. Hina Kausar Mirza, I.L.R. (2019) M.P. 1782*

– Section 125 and Hindu Marriage Act (25 of 1955), Section 9 – Interim Maintenance – Entitlement – Decree of Restitution of Conjugal Rights – Living separately without sufficient cause – Wife alongwith children was granted interim maintenance from husband – Ex-parte decree of restitution of conjugal rights against wife – Held – It is admitted that no efforts were made by applicant to enforce the decree – Unless and until it is proved that inspite of his best efforts, wife is not willing to join his company and is residing separately without sufficient cause, no advantage of ex-parte decree can be taken by applicant – Revision dismissed: *Kedar Vs. Smt. Seema, I.L.R. (2018) M.P. 2973*

8. Divorced Muslim Woman

– Section 125 – Divorced Muslim Woman – Iddat Period – Entitlement – Held – Divorced muslim woman is entitled for maintenance u/S 125 Cr.P.C. beyond the *iddat* period till her remarriage or according to conditions enumerated u/S 125 Cr.P.C: *Afaque Khan Vs. Hina Kausar Mirza, I.L.R. (2019) M.P. 1782*

– Section 125 – Divorced Muslim Woman – Iddat Period – Entitlement – Held – Divorced muslim woman is entitled for maintenance u/S 125 Cr.P.C. beyond the *iddat* period till her remarriage or according to conditions enumerated u/S 125 Cr.P.C: *Mohd. Naseem Vs. Jainav Fatima, I.L.R. (2019) M.P. *55*

9. Enhancement

– Section 125 – Grant of maintenance – Non-applicant/husband admittedly getting salary of Rs. 37,000/- per month and his father is getting pension of Rs. 14,500/- – The contention of the husband/non-applicant is that he has to maintain his parents also, cannot be accepted as he is also under obligation to maintain his wife and daughter – Therefore, amount of maintenance granted to wife/applicant is enhanced from Rs. 6,000/- per month to Rs. 9,000/- per month and amount of maintenance granted to applicant no. 2/daughter is enhanced from Rs. 3,000/- per month to Rs. 5,000/- per month – Thus, a total amount of Rs. 14,000/- – The amount of Rs. 6,000/- per month granted under the Order of Family Court, shall be adjusted in this amount: *Bharti Vs. Himanshu, I.L.R. (2016) M.P. *2*

10. Entitlement of Major Child

– Section 125 – Interim maintenance – Adult son – Whether entitled for

interim maintenance – Held – Not entitled either himself or through his mother: *Shyama (Smt.) Vs. Laxmi Narayan, I.L.R. (2016) M.P. 562*

11. Entitlement of Parents

– Section 125 – Maintenance – Entitlement of Father or Mother – Liability of Major Daughter – Trial Court awarded Rs. 750 p.m. as maintenance jointly against major son and daughter – Held – Father is entitled to claim maintenance from his children – Apex court concluded that both son and daughter are liable to maintain their father or mother who is unable to maintain himself or herself – Looking to daily needs for an old person of 70 yrs. of age including health etc, maintenance amount is not on higher side – Revision dismissed: *Mohd. Shafiq Ansari Vs. Mohd. Rasool Ansari, I.L.R. (2019) M.P. *7*

12. Income of Husband & Wife/Quantum

– Section 125 – Income of Husband – Proof – Held – No document regarding income of husband produced before Court – Petitioner is a skilled labour, doing work of mobile repairing – As per State Government guidelines, income of applicant cannot be assessed more than 7000-8000 pm – Applicant directed to pay Rs. 2500 pm to wife and Rs. 2000 pm to daughter as maintenance: *Mohd. Naseem Vs. Jainav Fatima, I.L.R. (2019) M.P. *55*

– Section 125 – Maintenance – Income of Husband and Wife – Quantum – Wife filed application u/S 125 Cr.P.C. whereby the same was allowed and husband was directed to pay maintenance of Rs. 6000/- pm – Challenge to – Husband submitted that wife filed application for maintenance of Rs. 5000/- for herself and her daughter and subsequently application for daughter was withdrawn by wife, even then Rs. 6000/- pm was awarded for wife alone – Held – Looking to the facts that income of husband is around Rs. 12,000/- pm and wife had given B.A. final year examination, she had been unfaithful to husband during subsistence of marriage, she did not turn up for DNA examination as ordered by the Court and she was seeking only Rs. 5000/- pm as maintenance, amount of maintenance reduced to Rs. 4000/- pm: *Sukhdev Pakharwal Vs. Smt. Rekha Okhle, I.L.R. (2018) M.P. 1571*

– Section 125 – Maintenance – Quantum – Held – Husband is working as a teacher on contract basis – It is also clear that both the parties are financially not strong – Maintenance of Rs. 2000/- pm granted from date of order passed by JMFC: *Anju Mishra (Smt.) Vs. Arun Mishra, I.L.R. (2018) M.P. 2549*

– Section 125 – Interim maintenance – Rs. 5,000/- per month were granted by Family Court – The respondent is legally wedded wife of applicant, so applicant is duty bound to supply food, clothes and to provide roof to the respondent and as far as

the quantum of maintenance amount is concerned, keeping in mind the present scenario of sky-rocketing prices of livelihood the amount of awarded maintenance requires no interference – Application dismissed: *Amit Rao Naidu Vs. Smt. Rashmi Naidu, I.L.R. (2016) M.P. 1617*

– Section 125 – Maintenance – Quantum – Income of Husband and Wife – Held – There is no evidence produced by husband on record to substantiate his plea that wife is an educated lady and is earning sufficiently for maintaining herself – Further husband has not produced any evidence/certificate of his permanent disability which he claims – Applicant husband is an Engineer by profession – Order granting maintenance to wife upheld: *Pradeep Jain Vs. Smt. Manjulata Jain Modi, I.L.R. (2018) M.P. 1799*

– Section 125 – Maintenance Amount – Quantum – Take Home Salary – Deductions – Revision filed by wife for enhancement against the order passed by Family Court u/S 125 Cr.P.C. whereby husband was directed to pay Rs. 3000 per month to wife and Rs. 2000 per month to child – Held – Wife and children are entitled to enjoy same status which they would have otherwise enjoyed in company of husband/ father – Further held – Husband's gross salary is Rs. 31,794 and it is well established principle of law that while calculating deductions from salary only statutory deductions can be taken note of and voluntary deductions cannot be considered – In the present case, deductions towards contribution to cooperative bank, repayment of CPF loan (house loan) and repayment of festival advance cannot be taken into consideration in order to assess the take home salary of husband – Loan is nothing but receipt of salary in advance – Accordingly husband's take home salary is Rs. 25,460 – Considering the status of parties, price index, inflation rate coupled with the requirements of baby child, husband directed to pay Rs. 4000 per month to wife and Rs. 3000 per month to daughter from date of order – Application allowed: *Meeta Shain (Smt.) Vs. K.P. Shain, I.L.R. (2018) M.P. *26*

– Section 125 – Maintenance of Daughter – Quantum – Held – Trial Court granted maintenance to daughter @ Rs. 15000 p.m. – Held – Daughter living separately with mother since 2013 – For maintenance of daughter, not a single penny paid by applicant/father, who is Class I Officer with net salary of Rs. 72,084 p.m. – Just because daughter is living with her mother who is earning Rs. 36,076 p.m. would not provide a ground for applicant father to shirk from responsibility of his own daughter – Amount awarded is justified – Revision dismissed: *Lawrence Robertson Vs. Smt. Vani Jogi, I.L.R. (2019) M.P. *6*

– Section 125 – Quantum – Income of Husband – Consideration & Grounds – Held – Wife entitled to live with same standard of her husband – Wife is educated, practicing as an Advocate – Quantum of maintenance be decided after consideration

of her income also – Petitioner having responsibility of his unmarried sisters – Wife has also received some maintenance amount at the time of divorce – Maintenance amount reduced from Rs. 15000 pm to Rs. 10,000 pm: *Afaque Khan Vs. Hina Kausar Mirza, I.L.R. (2019) M.P. 1782*

– Section 125 – Quantum – Income of Husband & Wife – Burden of proof – Held – U/S 125 Cr.P.C., burden lies on husband to prove his income and liability – Wife's income is Rs. 34,707 p.m. whereas husband's income is Rs. 26,127 p.m. – Husband and wife both earning member are responsible for maintenance of daughter – Trial Court granted Rs. 5000 to daughter which, looking to present status of economy, is justified – No interference required: *Badri Prasad Jharia Vs. Ku. Vatsalya Jharia, I.L.R. (2020) M.P. 1755*

13. Interim Maintenance

– Section 125 – Interim Maintenance – Held – Interim maintenance amount is not the final amount, it can be re-determined (either enhanced or reduced) while deciding application u/S 125 Cr.P.C.: *Anubhav Ajmani Vs. Smt. Garima Ajmani, I.L.R. (2018) M.P. 2043*

14. Paternity of Child / DNA Test

– Section 125 – Maintenance – Entitlement – JMFC granted maintenance to wife and daughter – Revisional Court set aside the order of maintenance and directed JMFC to decide afresh after receiving report of DNA test and considering medical documents produced by husband – Held – Revisional Court rightly made directions – No interference called for – Application dismissed: *Sandhya Gupta (Smt.) Vs. Lakhendra Gupta, I.L.R. (2018) M.P. 2440*

– Section 125 and Evidence Act (1 of 1872), Section 112 – Paternity of Child – Presumption & Proof – Held – U/S 125, it is sufficient to prove the child to be legitimate child of husband, if relationship of husband and wife is in existence, child is born during such relationship, marriage between parties is not dissolved and husband was having access to wife – Husband failed to establish that he was not having access to his wife during the period, when she became pregnant – Presumption u/S 112 of Evidence Act rightly drawn against husband: *Badri Prasad Jharia Vs. Ku. Vatsalya Jharia, I.L.R. (2020) M.P. 1755*

15. Principle/Aims & Object

– Section 125 – Fundamental Principle – Held – The inherent and fundamental principle behind Section 125 Cr.P.C. is for amelioration of the financial state of affairs as well as mental agony and anguish which a woman suffers when she is compelled

to leave her matrimonial home: *Nirmala Dhurve (Smt.) Vs. Ramgopal, I.L.R. (2017) M.P. 1972*

16. Proof of Marriage/Presumption

– Section 125 and Hindu Marriage Act (25 of 1955), Section 11 – Legally Wedded Wife – Caretaker – Appreciation of Evidence – Held – Contention of respondent that appellant was engaged as a caretaker, is belied by his own submission that he came to know about appellant from a marriage bureau – Why would a person contacts a marriage bureau for engaging a caretaker, he could have contacted a nursing agency – Further, if respondent is paralyzed, why would he engage a women as caretaker against normal course of human conduct – Respondent failed to establish that appellant was only a caretaker: *Jyoti (Smt.) Vs. Trilok Singh Chouhan, I.L.R. (2020) M.P. 1837 (SC)*

– Section 125 and Hindu Marriage Act (25 of 1955), Section 11 – Legally Wedded Wife – Caretaker – Entitlement – Held – It is submitted that earlier husband of appellant is untraceable since 1999 and thus she married respondent in 2008 – Husband filed a case u/S 11 of Act of 1955 which was dismissed and order has attained finality – Parties have cohabited together for four years which would raise a presumption sufficient to sustain order of maintenance – Appellant entitled for maintenance – Impugned order set aside – Appeal allowed: *Jyoti (Smt.) Vs. Trilok Singh Chouhan, I.L.R. (2020) M.P. 1837 (SC)*

17. Recovery of Arrears – Limitation

– Section 125 & 125(3) – Recovery of Arrears of Maintenance – Limitation – On 14.05.13, Family Court directed husband to pay Rs. 15,000 p.m. to wife as maintenance – Amount not paid by husband – On 14.11.15, wife filed application u/S 125(3) Cr.P.C. whereby family Court held the wife entitled to receive maintenance amount for a period of preceding one year only – Challenge to – Held – Apex Court concluded that it is unreasonable to insist on filing successive applications when liability to pay maintenance as per order passed is a continuing liability – Respondent directed to pay entire unpaid amount of maintenance from date of order i.e. 14.05.13.: *Preeti Jain (Smt.) Vs. Manish Jain, I.L.R. (2017) M.P. 2378*

18. Second Marriage by Wife/Validity

– Section 125 – Maintenance – Entitlement – Term "wife" – Application u/S 125 filed by applicant was dismissed by Courts below – Challenge to – Held – Concurrent findings of Courts below that applicant/wife was divorced by respondent as per the prevailing customs and thereafter wife was remarried to another person – She does not comes within the purview of definition "wife" and is not entitled to

receive maintenance u/S 125 Cr.P.C. from respondent No.2/earlier husband: *Naththi Bai (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *128*

– Section 125 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Respondent entered into marriage with applicant vide a notarized document having complete knowledge of existence of applicant's previous marriage and started residing with her as husband and wife for a considerable long period – Husband cannot be permitted to take advantage of his own wrong – Husband admitted his signature on the instrument hence it is obvious that he also admits the contents of the same – Parties have admitted the existence of marriage – It is husband's legal obligation to maintain his wife – Matter remanded to Family Court for decision afresh keeping in mind that wife is entitled for maintenance and regarding quantum of maintenance, it is to be examined whether applicant has her own means to maintain herself – Impugned order set aside: *Laxmi Yadav (Smt.) Vs. Barelal Yadav, I.L.R. (2017) M.P. 2006*

– Section 125, Dissolution of Muslim Marriages Act, (8 of 1939), Section 2 and Hindu Marriage Act (25 of 1955), Section 5 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Applicant was earlier married to one Hanif Khan and later she divorced her husband by pronouncing triple "Talak" and was married to present respondent – Held – Applicant has not validly dissolved her first marriage – Dissolution of marriage by Muslim wife can only be in terms of Section 2 of the Act of 1939 – Muslim wife cannot dissolve marriage by pronouncing triple "Talak" – As per Hindu marriage, with regard to validity of marriage, consummation of marriage is a relevant factor but not the only criteria for determination – Subsequent marriage with respondent is contrary to Section 5 of the Act of 1955 and is a nullity – Maintenance application not maintainable – Revision petition dismissed: *Munni Devi (Smt.) Vs. Pritam Singh Goyal, I.L.R. (2017) M.P. *106*

19. Second Wife/Validity of Marriage

– Section 125 – Maintenance – Second wife – If the respondent/husband has done a cheating with the applicant/wife by not informing about the first marriage then still he is liable to pay maintenance to the applicant/wife – Application allowed: *Sukhvati Bai (Smt.) Vs. Manphool Narvariya, I.L.R. (2016) M.P. 287*

– Section 125 – Second wife – When entitled to maintenance – Non-applicant (husband) got married to the applicant by suppressing the fact of his first marriage and then taking a defence that since she is not legally married wife of the non-applicant she is not entitled to maintenance – Held – Husband cannot take advantage of his

own wrong and cannot be allowed to take such a defence – Further held – Where a woman knowingly enter into relationship with married male and cohabiting with him for a long time, the presumption of marriage in such situation already stands destroyed due to prior knowledge of the woman about the marital status of man – But where the woman is kept in dark about the first marriage, then it cannot be said that the woman is not entitled for maintenance u/S 125 of Cr.P.C. – Applicant would be treated as a "wife" for the purposes of grant of maintenance u/S 125 of Cr.P.C: *Pushpa Pandey (Smt.) Vs. Suresh Pandey, I.L.R. (2017) M.P. 450*

20. Miscellaneous

– Section 125 – See – Protection of Women from Domestic Violence Act, 2005, Section 20: *Manudatt Bhardwaj Vs. Smt. Babita Bhardwaj, I.L.R. (2019) M.P. 2117*

– Section 125 – See – Protection of Women from Domestic Violence Act, 2005, Sections 20, 23 & 26: *Manudatt Bhardwaj Vs. Smt. Babita Bhardwaj, I.L.R. (2019) M.P. 2117*

• **– Section 125 & 127** – Alteration in Maintenance Amount – Changed Circumstances – Evidence – Person seeking alteration in allowance has to prove changed circumstances by leading evidence – Income Tax return is a matter between assessee and revenue department and is not a public document – Court cannot take judicial notice to the same while considering application u/S 125 Cr.P.C. – Income has to be proved by leading evidence – It is not feasible for trial Court/Magistrate to first record evidence for Section 127 and thereafter to record evidence afresh for Section 125 – Applicant directed to lead evidence for final adjudication of application u/S 125 Cr.P.C. – No error in impugned order – Petition dismissed: *Anubhav Ajmani Vs. Smt. Garima Ajmani, I.L.R. (2018) M.P. 2043*

– Section 125 & 127 – Different Proceedings – Maintenance Amount – Enhancement – Held – Amount of Rs. 500 p.m. awarded to daughters/claimants u/S 125 Cr.P.C. by Gram Nyayalaya – Claimants filed appeal before Additional Session Judge whereby on 19.01.2016, amount enhanced to Rs. 1000 p.m. to each but before that on 26.10.2015, claimants also filed an application u/S 127 Cr.P.C. before Family Court whereby on 11.01.2017, amount was enhanced to Rs. 2500 p.m. to each – Held – Family Court exercising powers of JMFC, thus its order cannot supercede the order of Appellate Court – Order passed by Family Court set aside – Revision allowed: *Praveen Bajpai Vs. Ku. Ayushi Bajpai, I.L.R. (2019) M.P. 2594*

– Section 125 & 127 – Different Proceedings – Suppression – Held – Claimants approached Family Court concealing fact of pendency of appeal before Additional Session Judge – Claimants not entitled to gain any sympathy of Court –

Further, claimants approached two Courts for same relief – Not permissible in law: *Praveen Bajpai Vs. Ku. Ayushi Bajpai, I.L.R. (2019) M.P. 2594*

– Section 125 & 127 – Maintenance – Enhancement from Date of Application – Discretion of Magistrate – On application by wife u/S 127 Cr.P.C., maintenance of Rs. 4000 pm was enhanced to Rs. 15,000 pm from date of application – Challenge to – Held – Section 127 Cr.P.C. has been provided for alteration in order passed u/S 125 Cr.P.C., therefore it cannot be treated as an independent provision, it has to be read along with Section 125 Cr.P.C. and Section 125(2) empowers the Magistrate to pass order of maintenance from date of application – Legislature has left the discretion to Magistrate and Family Court with regard to date from which enhanced/altered allowance shall be payable – Revision dismissed: *Jaikumar Meena Vs. Smt. Radha Meena, I.L.R. (2017) M.P. 1994*

– Section 125 & 127 – Maintenance – Income of Husband – Plea of Responsibility of Parents – Held – Husband working as S.D.O and his take home salary is Rs. 50,000 pm – He also admitted that his brothers are posted as an ADPO and Drug Inspector – It is clear that financial condition of family is good and it cannot be said that applicant had sole responsibility to maintain his parents – Payment of insurance premium cannot be said to be compulsory deduction, further those policies are not in name of wife – Deserted wife should not live a life of destitute lady, she is also entitled for same status which she could have otherwise enjoyed in matrimonial house – Considering the status of parties, amount enhanced is not excess – Revision dismissed: *Jaikumar Meena Vs. Smt. Radha Meena, I.L.R. (2017) M.P. 1994*

– Section 125 & 127 – Territorial Jurisdiction – Stage of Proceedings – Held – Applicant/husband participated in entire proceedings u/S 127 Cr.P.C., but did not raise any objection regarding territorial jurisdiction – Objection not tenable and cannot be considered at this stage of revision: *Praveen Bajpai Vs. Ku. Ayushi Bajpai, I.L.R. (2019) M.P. 2594*

– Sections 125, 340 & 195 – Forged Documents – Criminal Prosecution – Enquiry – Discretion of Court – In maintenance case, respondent/husband produced forged pay slip – Held – It is the discretion of trial Court to decide whether complaint should be filed after an enquiry is held u/S 340 Cr.P.C. – Mere on application filed u/S 340 r/w 195 Cr.P.C., proceeding cannot be initiated – Court has to be of opinion that it is expedient in interest of justice that enquiry be made into for any offences referred u/S 195 Cr.P.C. which appears to have been committed in or in relation to proceeding in that Court – Trial Court rightly held, that respondent's version is only a pleading and not a part and parcel of evidence, thus no cognizance can be taken – Appeal dismissed: *Kusum Pathak (Smt.) Vs. Rampreet Sharma, I.L.R. (2019) M.P. 1111*

– Section 125 & 482 – Maintenance – Second Wife – Entitlement – Validity of Marriage – Respondent filed application u/S 125 Cr.P.C. whereby Magistrate directed applicant/husband to pay Rs. 3000 pm as maintenance – Revision filed by husband was also dismissed – Challenge to – Held – Applicant earlier married with one Premkunwarbai then again married respondent during lifetime of first wife – It is not a case where respondent married applicant knowingly the subsistence of his first marriage or that his first wife is alive – Respondent entitled for maintenance – Further held – Applicant in his cross examination stated that he did not want to keep the respondent with him which shows that applicant deserted respondent without sufficient cause and thus respondent had sufficient reason to live separately and claim maintenance – Amount awarded cannot be said to be excess – Application dismissed: *Sardarsingh Vs. Smt. Chainkunwar, I.L.R. (2017) M.P. *112*

– Section 125(1)(b) – Entitlement of Child – Paternity of Child – DNA Test – Held – In respect of paternity of child, trial Court dismissed the application of husband for DNA test, although wife has not refused for the same – Wife's refusal for DNA test in another divorce matter cannot be considered in present case filed u/S 125 Cr.P.C. for drawing presumption against her – Adverse inference against wife cannot be drawn – DNA test is not mandatory in proceeding u/S 125 Cr.P.C. because u/S 125(1)(b), both legitimate and illegitimate children are entitled for maintenance – Revision dismissed: *Badri Prasad Jharia Vs. Ku. Vatsalya Jharia, I.L.R. (2020) M.P. 1755*

– Section 125(3) – Arrears of Maintenance – Mode of Recovery – Limitation – Held – U/S 125 Cr.P.C. two methods/alternatives are available to Magistrate in case of non-compliance of order, one is to issue warrant for levying the amount due and second is to sentence such person for whole or any part of each month's default – Even second alternative can be used by Court after execution of warrant – Since limitation of one year is prescribed as per proviso for issuance of warrant, second alternative can also be exercised only within time frame prescribed in the proviso: *Preeti Jain (Smt.) Vs. Manish Jain, I.L.R. (2017) M.P. 2378*

– Section 125(4) and Evidence Act (1 of 1872), Section 114 – Adultery – Paternity of Child – Presumption & Adverse Inference – Eligibility for Maintenance – Held – In respect of the paternity of child, wife did not turned up for DNA examination as ordered by Court, an adverse inference u/S 114: illustration (h)] of Evidence Act ought to be drawn – Further held – Such adverse inference would only establish a fact that wife had been unfaithful to her husband on one or more occasions but such inference cannot deprive her to receive maintenance u/S 125 Cr.P.C. until and unless husband proves that she is continuously living in adultery – Even if presumed that child was not born within wedlock and was due to a single instance of sexual

intercourse outside the wedlock, wife would not be deprived of maintenance u/S 125 Cr.P.C: *Sukhdev Pakharwal Vs. Smt. Rekha Okhle, I.L.R. (2018) M.P. 1571*

– Section 126(2) – Earlier, *ex-parte* order of maintenance passed by trial Court was remanded back by this court with direction to entertain prayer u/S 126(2) Cr.P.C. if made by the applicant – Objection of limitation raised by non-applicants on the application filed by applicant – Held – Intention of Co-ordinate bench is to give chance to applicant for hearing before passing final order of maintenance – No reason to raise objection of limitation if entire amount of maintenance deposited by applicant – The delay in filing application deemed to be condoned: *Madhusudan Vs. Smt. Madhuri, I.L.R. (2017) M.P. *22*

– Section 126(2) – Setting aside of ex parte order – Registered notice was sent at the address of applicant – However, the same was returned back with endorsement that applicant is not present – No presumption can be drawn against applicant u/s 27 of General Clauses Act – Trial Court erred in proceeding *ex parte* against applicant – *Ex parte* order set aside – Matter remanded back: *Manvendra Yadav Vs. Smt. Sarvesh, I.L.R. (2016) M.P. 1572*

– Section 144 – See – Cigarettes & other Tobacco Products (Prohibition of Advertisement and Regulation of Trade Commerce, Production, Supply & Distribution) Act, 2003: *Rahul Kalra Vs. State of M.P., I.L.R. (2017) M.P. *25 (DB)*

– Section 144 – See – Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Sections 3, 4, 6 & 21: *Restaurant & Lounge Vyapari Association Vs. State of M.P., I.L.R. (2016) M.P. *14*

– Section 144 – Temporary measures – Proceedings under Section 144 of Cr.P.C. are temporary in nature and order under such proceedings cannot be passed to earn the status of permanent or semi-permanent character: *Restaurant & Lounge Vyapari Association Vs. State of M.P., I.L.R. (2016) M.P. *14*

– Sections 144 & 195 (1)(a)(i) and Penal Code (45 of 1860), Section 188 – Application for quashing of FIR u/S 482 of Cr.P.C. – FIR – Violation of the order of District Magistrate u/S 144 of Cr.P.C. by creating road block by the petitioner and his 50-60 supporters – No permission obtained of rally – Subsequently, FIR lodged by concerned S.H.O. u/S 188 of IPC – Whether a Court can take cognizance of offence punishable u/S 188 of IPC on the basis of FIR lodged by the S.H.O. – Held – No, in the present case the petitioner has violated the prohibitory order of the District Magistrate and as per Section 195(1)(a)(i) of IPC no court shall take cognizance u/S 188 of IPC except on a complaint in writing of the concerned public servant and in this case the FIR has been lodged by S.H.O. whereas complaint in writing ought to

have been lodged by District Magistrate, so the concerned FIR is quashed: *Preetam Lodhi Vs. State of M.P., I.L.R. (2016) M.P. 2826*

– Section 145 & 146 – See – Land Revenue Code, M.P., 1959, Section 51: *Siddharth Dev Singh Vs. State of M.P., I.L.R. (2018) M.P. 1464*

– Section 154 – Delay in F.I.R. – 3 hours – Place of incident 12 km from police station – Deceased shifted to hospital by Tractor trolly – No delay in lodging FIR: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1152 (DB)*

– Section 154 – Delay in FIR – Held – Incident is of 26.10.2016 and FIR was lodged on 18.02.2017 – Had it been a case of cruelty or a case of abetment to commit suicide, nothing prevented the parents of the girl or other relatives to lodge a FIR with quite promptitude: *Manorama Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 674*

– Section 154 – FIR – Ante-time – Effect – Victim intimated the police after two hours of incident but FIR was registered at 23:50 and incident took place at 23:30 – Held – Victim is an illiterate lady and would have stated an estimated time and such type of variation in the estimated time is natural which does not make the statement doubtful: *Bilavar Vs. State of M.P., I.L.R. (2018) M.P. 137 (DB)*

– Section 154 – FIR – Contents – Held – FIR is information of incident at the first instance and therefore FIR need not contain minute details: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Section 154 – FIR – Held – FIR admittedly recorded after visiting the spot by police – There is a possibility that the story could have been concocted after seeing the site and conferring with all the villagers: *Imrat Singh Vs. State of M.P., I.L.R. (2020) M.P. 548 (SC)*

– Section 154 – FIR – Held – FIR is not an encyclopedia which is expected to contain all minute details of prosecution case – It may be sufficient if broad effects of the case is stated therein: *State of M.P. Vs. Chhaakki Lal, I.L.R. (2019) M.P. 507 (SC)*

– Section 154 – FIR – Held – Merely because certain columns of FIR were not filled up, it cannot be said that FIR was written *ante-time*: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Section 154 – First Information Report – This section obliges the police to register the offence if information furnished discloses commission of cognizable offence – The police has no authority to dwell into the veracity or probative value of the allegation: *Ram Rati Vs. State of M.P., I.L.R. (2016) M.P. 3377*

– Section 154 – First Information Report – Two conditions must be satisfied – Firstly – Suspicion of cognizable offence – Secondly – Existence of sufficient ground for investigation – FIR registered in mechanical manner without application of mind – Deserves to be quashed: *Amrendra Kumar Vs. State of M.P., I.L.R. (2016) M.P. *10*

– Section 154 – Repeated FIR – Permissibility – Three FIR registered against applicants which are identical in nature but complainants and place of occurrence are different – Held – Subsequent FIR for different offences committed in same transaction or offence arising as a consequence of prior offence is not permissible but second complaint in regard to same incident filed as counter complaint is permitted in Cr.P.C. – Second FIR for same nature of offence against same accused lodged by different person or containing different allegations is maintainable – In present case, test of "sameness" and "consequence" not satisfied – No error in registering three different FIRs: *Taranjeet Singh Hora Vs. State of M.P., I.L.R. (2018) M.P. 2977*

– Section 154 – Second FIR – Maintainability – Held – Apex Court concluded that second FIR by rival party giving a different version of same incident is permissible – In instant case, second FIR not lodged as counter complaint by a rival party – prima facie it appears that second FIR is not maintainable: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 154 – See – Penal Code, 1860, Section 376 (1) & 506-B: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Section 154 – See – Penal Code, 1860, Section 376(2)(f): *Dhokan @ Dhokal @ Gokul Vs. State of M.P., I.L.R. (2019) M.P. 1541 (DB)*

– Section 154 – See – Penal Code, 1860, Sections 406, 420 & 409: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Sections 154, 156 & 482 – Lodging of F.I.R. – Alternate Remedy – Inherent Power – Applicant seeking direction against respondent no. 1 to 3 for registering F.I.R. against respondent no. 4 & 5 for offence u/S 420, 467, 468, 471 & 120-B IPC on it's complaint – Held – Where a person has approached the police station u/S 154 of Code, but the police does not register F.I.R. as contemplated under law, he has right to make a complaint to superintendent of police concerned in terms of Section 154(3) Cr.P.C. - Superintendent of Police concerned exercising the power of officer–in–charge would investigate the matter himself or direct another police officer subordinate to him – If there is inaction on the part of Station House Officer & Superintendent of Police, Complainant is at liberty to move to Jurisdictional Magistrate u/S 156(3) Cr.P.C. and not directly to the High Court u/S 482 Cr.P.C. - Complaint shall be accompained by affidavit as mandated by Supreme Court – On

receipt of complaint, Magistrate shall pass order thereon – Petition disposed of: *Ramkrishan Solvex Pvt. Ltd. (M/s.) Vs. Superintendent of Police, I.L.R. (2017) M.P. 1770*

– Sections 154, 156(3), 200, 202 & 362 and Penal Code (45 of 1860), Sections 420, 467, 468, 471 & 31 – Complaint Case – Cognizance by Magistrate – Practice & Procedure – Held – Where an order u/S 156(3) Cr.P.C. is passed, it is mandatory for the police to register FIR and to file charge sheet or closure report as the case may be after investigation – Even if closure report is filed by police, complainant can raise objection and can also examine his/her witnesses and Magistrate is under obligation to give opportunity to complainant and after recording statements u/S 200 & 202 Cr.P.C. may take cognizance of complaint – Part of impugned order whereby complaint was dismissed holding that FIR has been registered and therefore nothing survives in complaint, is set aside – Application allowed: *Dipti Kushwah Vs. Vijay Shankar Tiwari, I.L.R. (2018) M.P. *90*

– Section 154 & 161 – See – Evidence Act, 1872, Section 145: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Section 154 & 482 – Repeated FIR – Quashment – Scope & Jurisdiction – Held – Apex Court has concluded that High Court in exercise of power u/S 482 Cr.P.C. cannot undertake a detailed examination of facts contained in FIRs by acting as an Appellate Court and draw its own conclusion, especially when investigation is not yet complete – Scope is limited – In present case, FIR contains prima facie allegation of commission of offence – Investigation is in progress and at this stage no final conclusion can be drawn – No ground to quash FIR and investigation – Application dismissed: *Taranjeet Singh Hora Vs. State of M.P., I.L.R. (2018) M.P. 2977*

– Section 156(3) – Application by Accused – Maintainability – Held – Applicant who is an accused has no authority to file an application u/S 156(3) Cr.P.C. – Concept of bilateral participation of both rival parties i.e. prosecution and accused during process of investigation is foreign to the very concept and object of Cr.P.C. – Trial Court rightly rejected the prayer – Revision dismissed: *Rajesh Sharma Vs. State of M.P., I.L.R. (2017) M.P. 3114 (DB)*

– Section 156(3) – Exercise of Jurisdiction by Magistrate – CBI after investigation filed a closure report before Magistrate whereby Magistrate u/S 156(3) Cr.P.C. directed further investigation – Similarly, this continued for three occasions where CBI filed the closure reports and Magistrate repeatedly directed further investigation and ultimately CBI filed a charge sheet against the petitioners – Held – The last order passed u/S 156(3) shows that CBI was directed to further investigate on 5 points which were already investigated by the CBI in its earlier closure reports

– It is apparent that CBI filed charge sheet against petitioners out of sheer desperation – It is a case of subliminal coercion of CBI which was the result of persistent orders by the Court below u/S 156(3) on account of which CBI was somewhere compelled to ultimately file a charge sheet against the petitioners despite having filed detailed and reasoned closure reports on three earlier occasions – For exercising powers u/S 156(3) Cr.P.C. by the Magistrate/Court, guidelines framed/issued – Crime registered by CBI and proceedings thereto are quashed – Petition allowed: *Kuntal Baran Chakraborty Vs. Central Bureau of Investigation, I.L.R. (2018) M.P. 215*

– Section 156(3) – Investigation – Held – Magistrate has wide powers to ensure proper investigation and for this purpose he can monitor the investigation and if the investigation is not done properly, aggrieved person has a remedy of approaching the Magistrate – No need for any further direction – Petition disposed of: *Ritesh Inani Vs. State of M.P., I.L.R. (2017) M.P. 1409*

– Section 156(3) – Mandatory registration of FIR before investigation – Held – Registration of FIR is obligatory on the part of police before initiating investigation, if magistrate u/S 156(3) Cr.P.C. directs police to submit its report: *Narottam Pathak Vs. State of M.P., I.L.R. (2017) M.P. 762*

– Section 156(3) – Remedy available is of not routine nature and exercise of power requires application of mind – Magistrate exercising power must remain vigilant to the nature of allegations: *Amrendra Kumar Vs. State of M.P., I.L.R. (2016) M.P. *10*

– Section 156(3) – Stage of Investigation – Maintainability – Held – Apex Court concluded that invocation of Section 156(3) Cr.P.C. by Magistrate is permissible only during pre-cognizance stage – Once Magistrate takes cognizance of offence whether before or after filing of charge sheet, then Section 156(3) Cr.P.C. cannot be employed to direct investigation – In instant case, application u/S 156(3) was filed when process of investigation was on and charge sheet was not filed i.e. at the pre-cognizance stage and therefore could have been entertained: *Rajesh Sharma Vs. State of M.P., I.L.R. (2017) M.P. 3114 (DB)*

– Section 156(3) and Penal Code (45 of 1860), Sections 409, 420, 468 & 471 – Power of Magistrate to Order Investigation – Held – Even for offences which are exclusively triable by Sessions Court, Magistrate can order for investigation u/S 156(3) Cr.P.C. at the pre-cognizance stage – Magistrate's direction u/S 156(3) Cr.P.C. does not amount to taking cognizance – In present case, no cognizance has been taken by Magistrate – No illegality in impugned order – Application dismissed: *Lakhpat Singh Vs. State of M.P., I.L.R. (2018) M.P. *64*

– Sections 156(3), 173(8) & 465(2) – See – Prevention of Corruption Act, 1988, Section 13(1)(e) r/w Section 13(2): *Raj Kamal Sharma Vs. State of M.P. through Special Police Establishment (Lokayukt), I.L.R. (2017) M.P. *58 (DB)*

– Sections 156(3), 200, 202, 204 & 482 – Cognizance of offence – Police Report does not disclose commission of offence and reveals only civil liability – To take cognizance even then – The court is bound to give reasons as to what were the compelling circumstances for taking cognizance and show the application of mind – Failing is fatal – The order is woefully silent as to what was the material in the statement u/S 200 Cr.P.C. which compelled Trial Court to reject the police report of non-commission of offence – Held – The order summoning accused is deficient in material particulars therefore, the proceedings are bad in law: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Sections 156(3), 200 & 482 – Examination u/S 200 & 202 Cr.P.C. – Affidavit – On application u/S 156(3) Cr.P.C., Magistrate directed police to lodge FIR and investigate the matter and to file final report – Challenge to – Held – Prosecutrix filed an affidavit alongwith her application to police and before the Court – Apex Court has concluded that Magistrate is not required to examine complainant on oath as required u/S 200 Cr.P.C., where police investigation ordered u/S 156(3) Cr.P.C. prior to taking cognizance of offence: *Sandeep Vs. Neelam, I.L.R. (2018) M.P. *98*

– Section 156(3) & 482, Penal Code (45 of 1860), Sections 406, 420, 463, 464, 467, 468, 471/34 & 120-B and Income Tax Act (43 of 1961), Sections 12-A & 80-G – Quashment of Criminal complaint – Grant of certificate – Charitable activities – Exemption – Exemption certificate alleged to be forged & fabricated – Inference drawn by the Income Tax Authorities cannot form basis for allowing the application under Section 482 – The Income Tax Authorities are not "Court" in the real senses of the terms – They are more like Administrative Tribunal, their main purpose is to ascertain the amount of revenue – Therefore, their inference cannot be utilized for the purpose of a criminal proceeding – Any subsequent development in criminal proceedings cannot absolve a person from his criminal liability – It can be seen only at the relevant time when the offence was allowed to have been committed: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Section 157 – Non-Compliance – Effect – Held – Mere delay in sending report to concerned Court u/S 157 Cr.P.C. will not make the FIR untrustworthy as a rule of thumb – Case of prosecution may not be thrown out merely because of non-compliance of Section 157 Cr.P.C. – It must be proved that such delay or non-sending of FIR to Court has caused prejudice to the defence: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Section 157 – See – Penal Code, 1860, Section 302: *Bhagchandra Vs. State of M.P., I.L.R. (2017) M.P. 3094 (DB)*

– Section 157 – See – Penal Code, 1860, Section 302: *Mansingh Vs. State of M.P., I.L.R. (2019) M.P. 1120 (DB)*

– Section 157 – Sending of report to Magistrate – Forthwith – F.I.R. registered on 27/06/1997 at 10 p.m. – Report forwarded to Magistrate on 30/06/1997 at 1.20 p.m. – Delay – Whether delay in forwarding the report to Magistrate speaks about falsity of the case – Held – Though there was delay in forwarding the report to the Magistrate but such a delay has not caused any serious prejudice to the appellants and even otherwise there was over whelming and incriminating evidence, both oral as well as documentary to support the case of the prosecution: *Narender Singh Vs. State of M.P., I.L.R. (2016) M.P. 641 (SC)*

– Section 161 – Delay in Recording Statement – Held – Appellants failed to establish what prejudice is caused to them, if statements were recorded belatedly and how such delay will cause dent to prosecution story – Court unable to mechanically hold that for this particular reason, judgment can be interfered: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Section 161 – Scope – Admissibility – Held – Statement u/S 161 is inadmissible in evidence and cannot be relied upon or used to convict the accused – It can only be used to prove contradictions and/or omissions – High Court erred in relying on statements u/S 161 Cr.P.C. while convicting them: *Parvat Singh Vs. State of M.P., I.L.R. (2020) M.P. 1515 (SC)*

– Section 161 – See – Evidence Act, 1872, Section 145: *Bhagwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 564 (DB)*

– Section 161 – See – Penal Code, 1860, Section 302/149 & 148: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Section 161 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x): *Mohsin Vs. State of M.P., I.L.R. (2017) M.P. *118*

– Section 161 and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Certification of Doctor – Reliability – Held – Statement of a injured victim recorded u/S 161 Cr.P.C., after his death, can be treated as dying declaration being previous statement – Further, dying declaration cannot be disbelieved merely for want of doctor's certification regarding fit state of mind: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

– Section 161 & 164 – Police Statement and court Statement – Discrepancies – Numerous – Held – As the discrepancies relates to details and particulars of the incident but they do not affect the core of the prosecution story, so the Court statement of the witnesses are not affected due to aforesaid omission: *Shivprasad Panika @ Lallu Vs. State of M.P., I.L.R. (2018) M.P. 1732 (DB)*

– Section 161 & 311 – See – Evidence Act, 1872, Section 145: *Laxminarayan Agrawal Vs. State of M.P., I.L.R. (2019) M.P. 494*

– Section 161 & 482 – See – Penal Code, 1860, Section 306/34: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 162 & 174 and Evidence Act (1 of 1872), Section 145 – Further cross-examination of prosecution witness, sought by accused to take contradictions and omissions in the statements recorded during the inquest and police statements u/S 161 – Allowed with limitations: *Mamta Vs. State of M.P., I.L.R. (2016) M.P. 2103*

– Section 164 – Recording of Statements – Eye Witnesses – Held – Eye witness must be examined and statement be recorded as soon as possible during investigation itself u/S 164 Cr.P.C. – As per amendment of 2009 in Section 164 Cr.P.C., statement of witnesses should be got recorded by audio-video electronic means: *Doongar Singh Vs. State of Rajasthan, I.L.R. (2017) M.P. 2922 (SC)*

– Section 164 – See – Penal Code, 1860, Section 302: *Kanchedilal Thakur Vs. State of M.P., I.L.R. (2018) M.P. 1547 (DB)*

– Section 164 – Seizure – Ocular testimony – Circumstantial evidence – Held – As the case is based on ocular testimony and is not based on circumstantial evidence, so any discrepancy in seizure of weapons is immaterial: *Shivprasad Panika @ Lallu Vs. State of M.P., I.L.R. (2018) M.P. 1732 (DB)*

– Section 164 – Statement of Doctor – Credibility – Held – Statement of Doctor as witness cannot be discredited on the ground that it is not accordance with opinion expressed in books of medical jurisprudence – Moreso when relevant passage of book was not brought to notice of the doctor during deposition – Conviction on this ground is not legally sustainable: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 164 & 439, Penal Code (45 of 1860), Section 363, 366, 376/34 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – Bail – Grounds – In the trial Court, Special Judge rejected the bail application of the applicant – Held – Prosecutrix's statement recorded u/S 164 shows that she stated her age to be 19 years, she married with applicant with her consent and therafter started living in Delhi as husband and wife and applicant had sexual intercourse with

her upon her will and consent – She also stated that she wants to remain in company of applicant as his wife – While rejecting the bail application, Special Judge has not assigned any reason as to why he has not placed reliance upon and disbelieved the statement of prosecutrix recorded u/S 164 Cr.P.C. – Order of rejection of bail smacks of arbitrariness and willfulness on the part of Special Judge and such approach is strongly disapproved by this Court – It is a fit case for grant of bail – Bail granted to applicant/accused – Application allowed: *Manoj Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. *96*

– Section 167 & 173(2) – Final Police Report – Completion of Investigation – Default Bail – Held – Merely because the report u/S 173(2) states that further investigation is in progress, does not bar the Magistrate from taking cognizance – If material on record of incomplete investigation is sufficient to take cognizance, Magistrate can do so – Police report must not be filed in such a manner that it's contents reveal that investigation is incomplete and report has been filed only to defeat the right of accused to a default bail u/S 167(2) Cr.P.C. – In the present case, investigation related to petitioner was incomplete and police report was filed at the fag end of ninety days period which makes it apparent that charge sheet was filed only with intent of frustrating the right of petitioner to apply for default bail – Petitioner directed to be released on bail – Petition allowed: *Manish Gandhi Vs. State of M.P., I.L.R. (2017) M.P. *157*

– Section 167(2) – Counting of period of detention for the purpose of filing Chargesheet – Accused surrendered before the Court on 15.12.2014 and first day would complete after passage of 24 hours i.e. on 16.12.2014 – Therefore, counting shall begin from 16.12.2014 and not from 15.12.2014: *Meharazuddin Vs. State of M.P., I.L.R. (2016) M.P. 2837*

– Section 167(2) – Duty of Investigation Officer/Agency – Held – It is not permissible for the Investigation Officer to keep the investigation pending for some accused and to file charge-sheet against the arrested accused to defeat the provisions of Section 167(2) of Cr.P.C. so that bail should not be granted to the arrested accused due to incomplete investigation – Further held – Investigation Agency is empowered under Section 173(8) of Cr.P.C. to further investigate the matter after filing of charge-sheet but not to re-investigate or re-open the matter: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Section 167(2) – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/20 & 36(A)(4): *Jitendra Vs. State of M.P., I.L.R. (2019) M.P. 2121*

– Sections 167(2), 436A & 439 and Penal Code (45 of 1860), Section 380 – Bail – Grounds – Held – Investigation still in progress despite passage of 3½ years

of arrest – Applicant served more than the maximum sentence in custody, which JMFC can impose upon him under the said offence – Applicant entitled for relief u/S 436A – Bail granted and Guidelines laid down to be followed by the Courts below in cases where 167(2) and 436A becomes applicable: *Hyat Mohd. Shoukat Vs. State of M.P., I.L.R. (2020) M.P. 2174*

– Section 167(2)(a)(ii) – Grant of Bail – Held – Section 167(2)(a)(ii) provides for release of person where investigation does not conclude within a period of 90 days or 60 days depending upon nature of offence – He can only be held in further custody where he is unable to furnish bail or does not furnish bail: *Hyat Mohd. Shoukat Vs. State of M.P., I.L.R. (2020) M.P. 2174*

– Section 173 – Charge sheet and Supplementary Charge-sheet explained – The final report filed under Section 173(2) of Cr.P.C. is known as charge-sheet – Provisions of Section 173(8) of Cr.P.C. gives residuary power to the Investigation Officer that if after filing of charge-sheet, any extra material is found in the case then the additional report can be filed which is generally known as supplementary charge-sheet – Held – Report under Section 173(2) of Cr.P.C. shall be filed after complete investigation of the case and not of a particular accused – After due investigation it is the right of the police to declare some of the accused persons as absconding or at the time of filing of charge-sheet, he may file a report under Section 169 of Cr.P.C. against some of the accused persons with the opinion that no offence is made out against them: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Section 173(2) – Final report was filed submitting that no offence was found to have been committed by appellant – Magistrate issued directions directing police to file charge-sheet – Held – Such a direction is wholly unsustainable – Appeal allowed: *Ramswaroop Soni Vs. State of M.P., I.L.R. (2020) M.P. 41 (SC)*

– Sections 173(2), 202 & 204 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 92: *Bholaram Sarwe Vs. State of M.P., I.L.R. (2016) M.P. 2482*

– Section 173(8) & 482 – Investigation During Trial – Held – During trial, vide impugned order, mobile phone sent to FSL to retrieve its recording – For ends of justice, in appropriate cases, Court can order further investigation even at the stage of trial – Presiding Officer exercised his right for further collection of evidence – No legal impediment in exercising such right – Application dismissed: *Lokesh Solanki Vs. State of M.P., I.L.R. (2020) M.P. 1212*

– Section 174 – Inquest report – Purpose – To indicate the injuries found on the body of deceased: *Mamta Vs. State of M.P., I.L.R. (2016) M.P. 2103*

– Section 174 – Statement recorded u/S 174 can not be used as a substantive piece of evidence – Can be used to corroborate or contradict the person making it: *Mamta Vs. State of M.P., I.L.R. (2016) M.P. 2103*

– Section 177 & 178 – See – Penal Code, 1860, Section 498-A: *Dushyant Singh Gaharwar Vs. State of M.P., I.L.R. (2017) M.P. *135*

– Section 177 & 178, Penal Code (45 of 1860), Section 498-A/34 & 406 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Cognizance – Territorial Jurisdiction – Complaint lodged by wife at Bhopal – Husband's native place is Jaipur and he is working in Agartala – Marriage performed at Jaipur – Court at Bhopal took cognizance of the offences – Challan was filed and charges framed – Husband filed application u/S 239 for discharge on the ground of territorial jurisdiction which was dismissed – Held – As per the FIR and case diary statement of wife and her father and brother, petitioner No.1/husband came to Bhopal and committed dowry related offences – Provisions of Section 178(b) Cr.P.C. is wholly attracted in the present case irrespective of the fact that an isolated part/portion of whole crime occurred in Bhopal – Court at Bhopal has the territorial jurisdiction to hold trial against all petitioners – Application dismissed: *Anurag Mathur Vs. State of M.P., I.L.R. (2017) M.P. 2031*

– Sections 177, 178 & 179 – Territorial Jurisdiction – Held – Combine/joint search operation undertaken by Income Tax department simultaneously at Bhopal and Aurangabad – Offence can be tried by Courts otherwise competent at both aforementioned places – Further held – The locker eventually located, though at Aurangabad, has perceptible co-relation/nexus with subject of assessment and appellants filed their return at Bhopal – Complaint lodged at Bhopal is maintainable – Objection rejected: *Babita Lila Vs. Union of India, I.L.R. (2017) M.P. 2587 (SC)*

– Sections 177, 178 & 179 and Penal Code (45 of 1860), Sections 420, 467, 409 & 120-B – Territorial Jurisdiction – Held – Residential township constructed within territorial jurisdiction of police station Sirol, Distt. Gwalior and all sham sale deeds were also executed at Gwalior – Entire offence has been committed in Gwalior – Contention that, Company having registered office at Noida and all decisions were taken at Noida, has no significance – Court at Gwalior has jurisdiction to try the offence – However, it is settled law that where offence has taken place within territorial jurisdiction of more than one police stations, then each police station has jurisdiction to investigate the offence – Application dismissed: *Manoj Shrivastava Vs. State of M.P., I.L.R. (2019) M.P. 207*

– Section 182(2) and Penal Code (45 of 1860), Section 494 – Bigamy – Territorial Jurisdiction – Held – As per Section 182(2) Cr.P.C., the Court in whose

jurisdiction, the first wife is permanently residing after commission of offence, shall have the jurisdiction to entertain the complaint – Presently, first wife residing at Gwalior thus trial Court at Gwalior having territorial jurisdiction which rightly took cognizance – Application dismissed: *Sandeep Nahta (Dr.) Vs. Smt. Deepa @ Jaya Nahta, I.L.R. (2018) M.P. *97*

– Section 187 & 384 – See –Prevention of Corruption Act, 1988, Sections 7 & 13(1)(d)(I)(III): *Bahadur Singh Gujral Vs. State of M.P., I.L.R. (2016) M.P. 3390 (DB)*

– Section 188 – For the particular offence, which taken place out-side India, sanction of the Central Government is required, which can be obtained after taking of cognizance by the Magistrate: *Ankit Neema Vs. State of M.P., I.L.R. (2016) M.P. 3174*

– Section 190 – Cognizance by Magistrate – Held – Cognizance means when Court or Magistrate takes judicial notice of offence with a view to initiate proceedings – Taking cognizance is entirely different thing from initiation of proceedings, it is a condition precedent to initiation of proceeding by Magistrate – Cognizance is taken of cases and not of persons: *Sumit Jaiswal Vs. Smt. Bhawana Jaiswal, I.L.R. (2019) M.P. 1332*

– Section 190 – Cognizance – Opportunity of hearing – Appreciation of Evidence – Held – No opportunity of hearing is required to be extended to persons against whom the court proposes to take cognizance u/S 190 Cr.P.C. and even no meticulous appreciation of evidence is required nor permissible – Whether FIR and police case diary statement of complainant should be accepted or not and whether statements of independent witnesses should be discarded in the light of FIR and case diary statement of complainant, is a question to be decided by the trial Court after taking evidence: *Uttam Chand Verma Vs. State of M.P., I.L.R. (2017) M.P. 1519*

– Section 190 – See – Protection of Women from Domestic Violence Act, 2005, Section 2(e) & 12: *Sumit Jaiswal Vs. Smt. Bhawana Jaiswal, I.L.R. (2019) M.P. 1332*

– Section 193 & 194 – See – Practice and Procedure: *In Reference Vs. Jitendra, I.L.R. (2017) M.P. 1223*

– Section 193 & 209 – Cognizance of Offence – Held – Once Magistrate has taken cognizance or has refused to take cognizance after considering the merits, then on committal, Sessions Court is not competent/entitled to take cognizance for second time for same offence directly u/S 193 Cr.P.C. without recording the finding that CJM had acted passively u/S 209 Cr.P.C. – However such order of Magistrate is

revisable – Impugned order quashed – Revision allowed: *Radheshyam Vs. State of M.P., I.L.R. (2018) M.P. *106*

– Section 195 – See – Income Tax Act, 1961, Section 132 & 246: *Babita Lila Vs. Union of India, I.L.R. (2017) M.P. 2587 (SC)*

– Section 195 & 340 – Preliminary Inquiry – Held – Main dispute is attached with a letter alleged to be written by respondent to the Chief Justice praying to list the matter before the Bench other than Justice 'X' – Respondent submitted that petitioner himself wrote the alleged letter with his forged signature – Held – Petitioner was under apprehension that petition will not be decided in his favour, thus he was having the cause to file vakalatnama of relative advocate of the Judge or to file forged letter in the name of respondent – Matter being suspicious, Principal Registrar (J) directed to conduct inquiry to ascertain the author of alleged letter and submit the inquiry report – Application allowed: *Vinod Raghuvanshi Vs. State of M.P., I.L.R. (2020) M.P. 2476*

– Section 195 & 340 – Preliminary Inquiry – Held – Preliminary enquiry is not mandatory but if circumstances required, then before filing complaint, preliminary enquiry can be made: *Vinod Raghuvanshi Vs. State of M.P., I.L.R. (2020) M.P. 2476*

– Section 195(1)(a)(i) – See – Penal Code, 1860, Section 182: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Section 195(1)(a)(i) & 216, Penal Code (45 of 1860), Sections 186, 353 & 506 part II and Electricity Act (36 of 2003), Section 135 – Alteration of charges – Electricity theft case – Initially charge u/S 135 of Electricity Act was framed against the accused but later, charges u/S 186, 353 and 506 part II of IPC were added by the trial Court – Held – There is a specific bar created u/S 195(1)(a)(i) CrPC according to which the trial Court cannot take cognizance of the offence u/S 186 IPC without there being any complaint by the concerned public servant – Further held – Since the ingredients of the offence u/S 186 and 353 IPC are different, court can take cognizance of offence u/S 353 IPC – Charge u/S 186 IPC set aside – Trial Court to proceed with charges u/S 353 and 506 part II IPC and u/S 135 Electricity Act, 2003 – Application partly allowed: *Pooran Singh Jatav Vs. State of M.P., I.L.R. (2017) M.P. *56*

– Section 195(1)(b)(i) – See – Penal Code, 1860, Section 211: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Section 195(1)(b)(ii) – Scope & Applicability – Held – Apex Court concluded that Section 195(1)(b)(ii) Cr.P.C. would be attracted only when offence enumerated in said provision have been committed with respect to a document, after it has been produced or given in evidence in a proceeding in any Court i.e. during the

time when document was in *custodia legis*: *Vinod Raghuvanshi Vs. State of M.P., I.L.R. (2020) M.P. 2476*

– Section 197 – Cognizance – Sanction – Held – If it is apparent to Court that complainant himself has stated that petitioners had exercised their powers with malafide intent, taking of cognizance by the Court in absence of a sanction u/S 197 Cr.P.C. is not proper – Trial Court ought to have directed the complainant to secure sanction from the authority u/S 197 CrPC and thereafter present the complaint – Sanction u/S 197 CrPC was essential as the record shows that petitioners were acting in their official capacity – Complaint does not disclose a single specific allegation against petitioners, same being omnibus in nature – Complaint case quashed – Petition allowed: *V.B. Singh Vs. Rajendra Kumar Gupta, I.L.R. (2018) M.P. 611*

– Section 197 – Public Servant – Sanction for Prosecution – Acts of cheating, fabrication of records or misappropriation of public money cannot be said to be a part of official duty of a public servant and therefore no sanction required u/S 197 of the Cr.P.C: *Suraj Kero Vs. State of M.P., I.L.R. (2017) M.P. 1237 (DB)*

– Section 197 – Sanction – Section 197 not only specifies the person to whom the protection is afforded but also the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied – The bar on the exercise of power of the Court to take cognizance of any offence unless sanction is obtained is absolute and complete – The question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty from unnecessary harassment on a complaint of an unscrupulous person – Further held – In the present case Court below was not justified in entertaining complaint without there being a sanction order: *Akhilesh Kumar Jha Vs. State of M.P., I.L.R. (2016) M.P. 1589*

– Section 197 – Sanction for Prosecution – Held – Apex Court concluded that previous sanction is required for prosecuting only such public servants who could be removed by sanction of Government – Petitioner, an employee of Housing Board – No material to show that regarding such employees, for removal from service, any prior sanction from Government is required – Petitioner not entitled for protection u/S 197 Cr.P.C. – Revision dismissed: *Dilip Kumar Vs. State of M.P., I.L.R. (2020) M.P. 1186*

– Section 197 – Sanction for Prosecution – Held – At relevant time, petitioners were Collector and S.P. Bhopal – Provision of Section 197 would attract, if they were discharging official duty at relevant time – While discharging their official duty, on direction of Chief Secretary, petitioners, for the purpose of safety and to protect the life of a foreign national (accused), shifted him out of Bhopal – Petitioners were discharging their official duty – No sanction was obtained by complainant – Proceedings quashed: *Swaraj Puri Vs. Abdul Jabbar, I.L.R. (2018) M.P. 2061*

– Section 197 – See – Prevention of Corruption Act, 1988, Sections 13(1)(d), 13(2) & 19: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

– Section 197 and Penal Code (45 of 1860), Sections 166 & 167 – Sanction u/S 197 – Prerequisite for taking cognizance of offences u/S 166 & 167 I.P.C. – Offences which by their very nature could only be committed in discharge of official duties – If alleged act of accused is unequivocally linked with the discharge of duties – Requirement of sanction is prerequisite for cognizance: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Section 197, Prevention of Corruption Act (49 of 1988), Section 19(1)(c) and Municipalities Act, M.P. (37 of 1961), Section 94 – Sanction – Competent Authority – Held – Since every appointment/removal made by Municipal Council is subject to approval by State Government, State satisfies the requirement of competent authority u/S 19(1)(c) of Prevention of Corruption Act – State Government being an authority superior to Municipal Council is having powers of validating an appointment made u/S 94 of the Act of 1961 – Sanction issued by State Government was proper – Application dismissed: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Sections 197, 200 & 482 and Penal Code (45 of 1860), Section 304-A – Quashment – Sanction of State Government – Cognizance Against Government Doctor – Offence was registered u/S 304-A I.P.C. against petitioner, a doctor in State Government, alleged to have committed negligence while discharging his duty, because of which daughter of respondent died – Challenge to – Held – It is undisputed that post-mortem was not done in present case and therefore cause of death remained speculative without any certainty – Nothing on record to show that deceased died on account of conduct by petitioner which can be termed as "grossly negligent" – Petitioner being a public servant and was discharging his duties as such, the alleged negligent omission arising therefrom had to be seen in context of discharge of official duties and a sanction u/S 197 Cr.P.C. was sin qua non for taking cognizance of offence against petitioner – Proceedings against the petitioner is quashed – In respect of such cases, guidelines for Court below and Police laid down – Petition allowed: *B.C. Jain (Dr.) Vs. Maulana Saleem, I.L.R. (2017) M.P. 1762*

– Sections 197, 397 r/w 401 & 482 – See – Prevention of Corruption Act, 1988, Sections 13(1)(d) & 13(2): *Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt, I.L.R. (2016) M.P. 599 (DB)*

– Section 197 & 482 – See – Penal Code, 1860, Sections 323, 294 & 352: *Ramanand Pachori Vs. Dileep @ Vakil Shivhare, I.L.R. (2020) M.P. 249*

– Section 197(1) & 482 – Quashment of proceedings – Sanction – Applicants are not the Public Servants appointed by the State Government and are not removable from their office save by or with the sanction of the Government –Held – Applicants are not entitled to get the benefit of the provision of Section 197(1) – Petition dismissed: *Swami Sharan Singh Vs. Rakesh Tripathi, I.L.R. (2017) M.P. 226*

– Section 199 and Penal Code (45 of 1860), Sections 465 & 501 – Cognizance for defamation – Can only be taken on complaint u/S 190(2) and in exercise of powers u/S 199 – And not on the basis of FIR: *Pramod Kumar Vs. State of M.P., I.L.R. (2016) M.P. 2129*

– Section 199(2) and Penal Code (45 of 1860), Section 499 & 500 – Sanction before filing complaint by Public Prosecutor – Revision against framing of charge – Defamatory allegations by applicant against Chief Minister and his family members regarding corruption – Criminal Complaint filed against applicant by Public Prosecutor whereby charges were framed against applicant – Challenge to –Regarding sanction for prosecution – Held – 'Sanction' is required before a Public Prosecutor files a complaint and not that he himself has to seek 'sanction' before filing a complaint – Role of Public Prosecutor is not to seek sanction, but to file a complaint after sanction is granted – In the instant case, Public Prosecutor was competent to file the complaint – Revision dismissed: *K.K. Mishra Vs. State of M.P., I.L.R. (2017) M.P. 2269 (DB)*

– Section 199(2) & 199(4) – Defamation – Sanction/Permission for prosecution – Procedure – Held – Before filing complaint, Public Prosecutor should analyse/scan and apply his mind regarding material placed before him regarding disclosure of offence – In present case, press meet was convened by appellant on 21.06.2014, Government accorded sanction to public prosecutor to file complaint on 24.06.2014 and complaint was filed on the very same day which indicates that Public Prosecutor has not applied its mind to materials/allegation placed before him – Complaint not maintainable: *K.K. Mishra Vs. State of M.P., I.L.R. (2018) M.P. 2083 (SC)*

– Section 200 – See – Electricity Act, 2003, Section 135: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Kalyan Singh Chauhan, I.L.R. (2016) M.P. 907*

– Section 200 – See – Negotiable Instruments Act, 1881, Section 138 & 145: *Shastri Builders Through Proprietor Vs. Peetambara Elivators (M/s.) Through Proprietor, I.L.R. (2019) M.P. *60*

– Section 200 and Protection of Women from Domestic Violence Act (43 of 2005), Section 28(2) – Preliminary examination – Domestic violence case – There is no requirement to record preliminary examination of the aggrieved person on filing the complaint and prior to taking the cognizance: *Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai, I.L.R. (2016) M.P. 302*

– Sections 200, 202, 203, 204 & 482 – Private Complaint – Quashment – Stage of Trial – Held – Magistrate u/S 202 Cr.P.C. decided to enquire into the complaint, thus mandatory proceeding is under way to determine whether complaint is to be registered or not – Statement of complainant is not yet recorded and Magistrate has not even taken cognizance of the matter, thus petition is pre-mature – Looking to complaint, prima facie case to proceed with issuance of notice is made out – Quashment at such initial stage is impermissible – Application disposed: *Manoj Singhal Vs. Rajendra Singh Bapna, I.L.R. (2019) M.P. 1571*

– Section 200 & 203 – Second Complaint – Maintainability – Held – Earlier complaint not disposed on any technical ground but was dismissed u/S 203 Cr.P.C. on merits, as Magistrate found no prima facie case – Core allegation in both complaints were identical – Second complaint filed not on any new facts but only with additional documents as supporting material, which could have been procured earlier also – Second complaint not maintainable – Impugned order set aside – Complaint dismissed – Appeals allowed: *Samta Naidu Vs. State of M.P., I.L.R. (2020) M.P. 1254 (SC)*

– Section 200 & 482 – See – Negotiable Instruments Act, 1881, Section 138: *Rafat Anees (Smt.) Vs. Smt. Bano Bi, I.L.R. (2017) M.P. 473*

– Section 200 & 482 and Penal Code (45 of 1860), Sections 323, 325, 326, 341, 294, 352, 354 & 506 (Part II) – Quashment of proceedings – Applicant working as Commanding Officer in NCC – Complainant working as Lascar, Class IV employee in NCC – Complainant is habitual latecomer, act of insubordination, false complaints etc. – Petitioner intimated acts of Complainant to his seniors by three letters immediately – Complaint was filed by the Complainant later on – Held – Court below has not examined the documentary evidence before taking cognizance, and the complaint by the Complainant is an afterthought, so as to take vengeance and is a counter blast on the part of the Complainant – Criminal complaint is hereby dismissed – Petition allowed: *A.K. Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2841*

– Section 202 – Complaint Case – Issue of Summons – Police Enquiry Report – Held – At the initial stage, when the complaint was filed, the trial Court ordered the police to conduct an inquiry u/S 202 Cr.P.C. which shows that there was not much material available in the complaint prima facie to issue process against the petitioner – After 15 adjournments, report was not filed by the police – In such circumstances, summoning order passed by the Trial Court without waiting for the Police Report u/S 202 Cr.P.C. is bad in law and is hereby set aside – Proceedings against petitioner quashed – Revision allowed: *Sahara India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1497*

– Section 202(1) & 482 – Quashment – Amendment of 2005 – Mandatory Requirement – Complaint case filed against petitioners whereby summons issued to

accused/petitioner – Held – Petitioners residing outside territorial jurisdiction of Magistrate – Before summoning accused, it was obligatory upon Magistrate to inquire into the case himself or direct investigation to police as he thinks fit – Mandatory requirements of Section 202 not followed – Impugned order set aside – Matter remanded back to Magistrate – Petition allowed: *Habibulla Vs. State of M.P., I.L.R. (2017) M.P. *155*

– Section 203 & 204 – Duty of Court – Held – Apex Court concluded that before passing any order u/S 203 or 204 Cr.P.C., Magistrate is duty bound to consider the complaint, documents annexed with it, statements u/S 200 Cr.P.C. and enquiry proceeding u/S 202 Cr.P.C., otherwise the order, if any passed by Magistrate would be bad in law: *Manoj Singhal Vs. Rajendra Singh Bapna, I.L.R. (2019) M.P. 1571*

– Sections 203, 204, 362, 401(2) & 482 – Dismissal of complaint u/S 203 Cr.P.C. without noticing the other side – Held – Scheme of Chapter XVI of Cr.P.C. shows that accused person does not come into picture at all till process is issued – Non-applicants are not required to be heard – Court below had inherent jurisdiction to act in accordance with law – No prejudice is caused by this order to the applicant – No interference is warranted – Application dismissed: *Awadesh Singh Vs. Rahul Gandhi, I.L.R. (2016) M.P. *35*

– Section 203 & 378(4) – Dismissal of Complaint – Appeal against Acquittal – Maintainability – Petitioner filed a complaint case against respondent whereby the trial Court refused to take cognizance and dismissed the complaint – Petitioner/ Complainant filed this appeal against acquittal – Held – "Inquiry" can be conducted by a Court in a proceeding but it would not come within the purview of "trial" and if complaint case is dismissed u/S 203 Cr.P.C. for want of sufficient ground for proceeding against the accused, it would not come within the purview of "acquittal" and such an order would not to be treated to be an order "after trial" – An appeal would lie in case of acquittal and order of acquittal would be after trial of the case – Dismissal of a complaint cannot be synonym to the order of acquittal – Hence, petition seeking leave to appeal against acquittal is not maintainable – Remedy available with petitioner is to challenge the impugned order by filing a revision or a petition u/S 482 Cr.P.C. – Petition dismissed: *Buddh Singh Kushwaha Vs. Umed Singh, I.L.R. (2018) M.P. 988 (DB)*

– Section 203 & 401(2) – Revision – Right of Accused – Opportunity of Hearing – Held – Apex Court concluded that it is a plain requirement of Section 401(2) Cr.P.C. that if Magistrate dismissed the complaint u/S 203 and a revision has been preferred by complainant, the accused is entitled for hearing by the Revisional Court although the impugned order was passed without his participation – No interference warranted in impugned order issuing process to accused – Application dismissed: *Nizamuddin Vs. State of M.P., I.L.R. (2019) M.P. *26*

– Section 204 – Appearance of accused before Trial Court – Only when the Trial Court takes cognizance of offence and issues process and never before that: *Rajendra Kori Vs. State of M.P., I.L.R. (2016) M.P. 3422*

– Section 204 – Issuance of Process – Practice and Procedure – Held – At the stage of considering the issuance of process to accused person, Court is not required to see that if there is sufficient ground for conviction: *M.P. Mansinghka Vs. Dainik Pratah Kaal, I.L.R. (2018) M.P. 821*

– Section 204 – Warrant Case – Issue of Non-Bailable Warrant – Held – Merely because the offense for which, presence of accused is required is triable as a warrant case, issuance of non-bailable warrant at the first instance is not justified – There was no pressing or compelling reasons before the Trial Court to secure presence of the accused by way of a non-bailable warrant – Not a single line has been written by the lower Court justifying the issuance of non-bailable warrant at the first instance, reflecting an application of mind – All accused persons are public servants occupying posts of responsibility and dignity – Even if a prima facie case is apparent on records, the Court ought to have issued summons u/S 61 CrPC instead of exposing them to threat of an arrest – It is completely unjustified in the eyes of law: *V.B. Singh Vs. Rajendra Kumar Gupta, I.L.R. (2018) M.P. 611*

– Sections 204(4), 378, 401 r/w Sections 397 & 482 and Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque – Applicant/ Complainant did not pay process fee – Trial Court can dismiss complaint, but cannot acquit accused – Order of dismissal of a complaint u/S 204(4) is not appealable u/S 378 of the code – Complainant was directed to pay process fee – Complaint u/S 138 of N.I. Act restored: *Bhupendra Singh Vs. Saket Kumar, I.L.R. (2016) M.P. *3*

– Section 204(4) & 378(4) – Dismissal of Private Complaint – Appeal or Revision – Held – Dismissal of private complaint for non-payment of process fee will not amount to acquittal of accused, thus appeal u/S 378(4) is not maintainable – Proper remedy is to file revision – Appeal dismissed: *Bhagwati Stone Crusher (M/s) Vs. Sheikh Nizam Mansoori, I.L.R. (2020) M.P. *14*

– Section 208 – Supply of copies of statements and documents to accused – It is not mandatory to supply all the documents to accused, the documents on which the prosecution proposes to rely has to be furnished to the accused – In this case, same has been done hence application dismissed – Further held – Discretion of court – If the documents are voluminous then instead of supplying, the accused will be allowed to inspect the same: *K.K. Mishra Vs. State of M.P., I.L.R. (2017) M.P. 477 (DB)*

– Section 209 – Committal explained – It is the case which is committed to the Court of Sessions and not the accused: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Section 210 – One case arises on police report under Section 173 Cr.P.C. and other being complaint under Section 92 of Factories Act, 1948 – Both cases should be heard together when death or bodily injury caused to person not covered under Factories Act – Otherwise, proceedings and punishment should be under Section 92 of Factories Act: *Neeraj Verma Vs. State of M.P., I.L.R. (2016) M.P. 1829*

– Section 211 – Framing of charge – Requirement – Prima facie case – Strong suspicion based on material on record: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Section 211 and Penal Code (45 of 1860), Sections 304-B & 306 – Charge framed – Specific allegation of active involvement – Name of accused not casually mentioned: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Section 211, Evidence Act (1 of 1872), Section 113 and Penal Code (45 of 1860), Sections 304-B & 306 – Framing of charge – At this stage, the Court should not hold elaborate enquiry and in depth appreciation of evidence to arrive at conclusion that the material produced is sufficient or not for conviction – Meticulous finding of material is not permissible: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Section 211, Evidence Act (1 of 1872), Section 113 and Penal Code (45 of 1860), Sections 304-B & 306 – Framing of charge – Presumption u/S 113 – Applicable for consideration: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Sections 211 to 214 – See – Penal Code, 1860, Sections 363, 366 & 376-E: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

– Section 211/246 – Charge must be specific, precise and pregnant with necessary details in order to make the accused aware as to what are specific allegations against him so that he can meet those charges and put forth his defence: *Sri Prakash Desai Vs. State of M.P., I.L.R. (2016) M.P. 1227*

– Section 211(7) & 298 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/20(b)(ii)(B) & 31: *Madhav Prasad @ Maddu Gupta Vs. State of M.P., I.L.R. (2018) M.P. 2494 (DB)*

– Section 216 – Alteration of Charge – Held – Apex Court has concluded that Section 216 empowers Court to alter or add any charge at any time before the judgment is pronounced – Power vested in Court is exclusive and there is no right in any party to seek such addition or alteration by filing an application as matter of right – No illegality committed by trial Court – Revision dismissed: *Banti Kushwah Vs. State of M.P., I.L.R. (2018) M.P. *88*

– Section 216 – Alteration of Charge – Held – Application filed by victim/ complainant – Apex Court concluded that Section 216 empowers Court to alter or add any charge at any time before judgment is pronounced – Power vested in Court is exclusive and there is no right in any party to seek such addition or alteration by filing an application as matter of right – No party, a de facto complainant, accused or prosecution has any vested right to seek any addition or alteration of charge – Impugned order set aside – Revision allowed: *Shanu Patel @ Sanat Patel Vs. State of M.P., I.L.R. (2018) M.P. *110*

– Section 216 – Alteration/Addition of Charge – Opportunity of Hearing – Principle of Natural Justice – Held – If prosecution makes the submissions bringing the factual aspects to notice of Court that additional charge requires to be framed, fullest opportunity should be given to accused to defend himself and after providing such opportunity, Court is empowered to pass appropriate order u/S 216 Cr.P.C. – Impugned order passed after independent application of mind following the principle of natural justice – Application dismissed: *R.K. Mittal Vs. State of M.P., I.L.R. (2019) M.P. 2154*

– Section 216 – Alteration/Addition of Charge – Power of Court – Held – Court shall not entertain applications as a matter of right by the parties, however parties to proceedings can make submissions/applications and Cr.P.C. empowers the Courts to entertain the submissions made for bringing the factual aspects to notice of Court that additional charge requires to be framed: *R.K. Mittal Vs. State of M.P., I.L.R. (2019) M.P. 2154*

– Section 216 – Framing of Charge – A charge against a person can only be framed if there exists a strong suspicion – But nothing less than that – Mere suspicion without any basis could not be the reason for framing of charge against a person – Therefore, learned trial Court has not committed any mistake in rejecting the application u/S 216 of Cr.P.C. – Revision petition dismissed: *Jatan Kumar Garg Vs. Satayanarayan Tiwari, I.L.R. (2017) M.P. 467 (DB)*

– Section 218 – Framing of Charge – Held – Charge is the parameter set by the Court within which the trial is to be conducted – Framing of Charge thus gives a clear understanding and an opportunity to accused to know the exact offence for which he is tried: *Krishan Mohan Agrawal Vs. State of M.P., I.L.R. (2017) M.P. *140*

– Section 221(2) & 300(1) and Mines Act, (35 of 1952), Section 72C(1)(a) and Metalliferous Mines Regulations, 1961, Regulation No. 115(5) & 177(1) – Second Trial – Jurisdiction – Petitioners were operator and manager of a mine – Some portion of mine took shape of a pond, where eight children drowned and died – On ground of necessary security arrangement lapse, petitioners were tried under the Mines Act

and the said Regulations whereby they were convicted and sentenced – In appeal, they got acquitted of the charges – From the same incident, Police also registered an offence u/S 304-A IPC and cognizance was taken by the Magistrate – Challenge to – Held – Second trial cannot be allowed merely on the ground that some more allegations, which were not made earlier in the first trial, have also been made – Such second trial initiated on the same facts comes under purview of Section 300(1) of Cr.P.C – Further held – Scope of Section 300 Cr.P.C. is wider than the protection afforded by Article 20(2) of the Constitution of India – Petitioners cannot be prosecuted and convicted in second trial – Proceeding quashed – Petition allowed: *Jayant Laxmidas Vs. State of M.P., I.L.R. (2018) M.P. 248*

– Section 223 & 317 – Joint Trial – Section 223 of Cr.P.C. is only an enabling Section and does not trammel the discretion of the Court – The Court has a discretion to proceed jointly or separately against the accused persons – Accused cannot claim a joint trial with co-accused – Impugned order does not suffer from any irregularity or illegality – No interference – Revision dismissed: *Archit Agrawal Vs. State of M.P., I.L.R. (2016) M.P. *1*

– Section 227 – Discharge – Consideration – Held – At the stage of framing of charge, Court must ascertain whether there is "sufficient ground for proceedings against accused" or there is ground for "presuming" that accused has committed the offence: *State of M.P. Vs. Deepak, I.L.R. (2019) M.P. 1624 (SC)*

– Section 227 – Double Jeopardy – Revision against the order framing charge against the applicant u/S 420, 467, 468, 471 and 120B IPC and against the dismissal of application of the applicant/accused filed u/S 227 Cr.P.C. – It was alleged that for borrowing money, applicant alongwith an another partner of the firm represented that all partners of the firm have consented for the same but later complainant found that firm was not in existence – Held – Record shows that earlier a prosecution was lodged against another partner u/S 138 of Negotiable Instrument Act, 1881, whereby he was acquitted of the charge but the same does not condone the misdeeds of the present applicant which are prima facie visible – Further held – Law relating to double jeopardy is well settled according to which the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different – The test to ascertain whether the two offences are same is not the identity of allegations but the identity of the ingredients of offence – Plea of autre fois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge – In the instant case, acquittal of other partner in a trial u/S 138 of the Act of 1881 is inconsequential to the facts of the present case – Revision dismissed: *Omprakash Gupta Vs. State of M.P., I.L.R. (2018) M.P. 603*

– Section 227 – See – Penal Code, 1860, Section 306: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

– Section 227 – See – Penal Code, 1860, Section 306: *State of M.P. Vs. Deepak, I.L.R. (2019) M.P. 1624 (SC)*

– Section 227 – See – Penal Code, 1860, Sections 306 & 107: *Hari Mohan Bijpuriya Vs. State of M.P., I.L.R. (2016) M.P. 2340*

– Section 227, Penal Code (45 of 1860), Sections 176, 336, 338, 304-A, 286 & 304, Explosives Act (4 of 1884), Section 9B & 9C and Explosive Substances Act, (6 of 1908), Section 5 – Principle that covers offences under the Indian Penal Code committed by companies – Director or a person responsible for the affairs of a company could not be prosecuted for offences under the IPC where the main allegations were against the company and the company was not arraigned as an accused – Impugned order set aside – Applicants are discharged – Application allowed: *P. Sadanand Reddy Vs. State of M.P., I.L.R. (2017) M.P. 426*

– Section 227 & 228 – Consideration of documents produced by accused – Held – Documents produced by accused cannot be considered at the time of framing of charge – Court declined to consider the Enquiry Report given by the Administrative Officer: *Jagdish Prasad Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3121 (DB)*

– Section 227 & 228 – Framing of charge – At this stage, truth, veracity and effect of the evidence are not meticulously judged: *Sitaram Chourasiya Vs. State of M.P., I.L.R. (2016) M.P. 3117*

– Section 227 & 228 – Framing of Charge – Charge of Embezzlement of money to be filled in ATM machine – Held – Prima facie sufficient material available against petitioner to proceed with trial – Elaborate discussion of evidence is not necessary at this stage – Accused may put his defence during evidence – No interference required – Revision dismissed: *Rishabh Mishra Vs. State of M.P., I.L.R. (2020) M.P. 1774*

– Section 227 & 228 – Framing of Charge – Conflicting Views – Held – The principle that where two views are possible, one favouring accused should be adopted, would have no application at the stage of framing of charge – If two conflicting material available, one favouring accused and other implicating him, the case will have to be put to trial: *Kattu Bai Vs. State of M.P., I.L.R. (2017) M.P. 3122*

– Section 227 & 228 – Framing of Charge – Consideration – Held – Apex Court concluded that at stage of framing charge, Court is not required to marshal evidence on record but to see that if prima facie material is available against accused or not – Court is not to see whether there is sufficient ground for conviction of accused

or whether the trial is sure to end in conviction – It is statutory obligation of High Court not to interfere at initial stage of framing of charge merely on hypothesis, imagination and far-fetched reasons which in law amounts to interdicting the trial: *Rishabh Mishra Vs. State of M.P., I.L.R. (2020) M.P. 1774*

– Section 227 & 228 –Framing of Charge – Considerations – At the stage of framing of charge, Court has to see whether from material produced on record it could be said prima facie that accused might have committed offence – Probative values of the material submitted with charge sheet is not required to be examined or evaluated under a microscope: *T.R. Taunk Vs. State of M.P., I.L.R. (2017) M.P. 3110 (DB)*

– Section 227 & 228 – Framing of Charge – Held – Facts cannot be adjudicated at the initial stage of framing of charge and without taking evidence on record – No interference required under the revisional jurisdiction: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Section 227 & 228 – Framing of Charge – Held – No necessity to frame charge u/S 376-A of IPC, when the charges of Sections 302 & 376 of IPC were framed, unless there was an additional effect of framing such a charge for or against the accused: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Section 227 & 228 – Framing of charge – If there is strong suspicion which leads the Court to think that there is ground for presumption of commission of offence, charge can be framed: *Sitaram Chourasiya Vs. State of M.P., I.L.R. (2016) M.P. 3117*

– Section 227 & 228 – Framing of Charge – Quashing of criminal proceedings – Held – Framing of charge is not a stage at which final test of guilt is to be applied – Apex Court has held that at the stage of framing of charge, Court is not concerned with proof of allegation rather it has to focus on the material in hand and form an opinion whether there is strong suspicion that accused committed an offence, which if put to trial, could prove his guilt – Power of quashing criminal proceedings particularly at such stage u/S 228 should be exercised very sparingly and with circumspection and that too in rarest of rare cases – In instant case, once the order of this Court was upheld by the Supreme Court, Trial Court acted illegally with material irregularity in discharging respondents – Impugned order set aside – Revision allowed: *Rakesh Vs. Subodh, I.L.R. (2017) M.P. *130*

– Section 227 & 228 – Framing of charge – Requirement – To evaluate the material and documents on record with a view to find out if the facts of the matter discloses the existence of all the ingredients constituting the alleged offence, charge can be framed: *Sitaram Chourasiya Vs. State of M.P., I.L.R. (2016) M.P. 3117*

– Section 227 & 228 – See – Penal Code, 1860, Section 115 & 120-B: *Chandar Singh Vs. State of M.P., I.L.R. (2017) M.P. *115*

– Section 227 & 228 – See – Penal Code, 1860, Section 304-B & 498-A: *Utkarsh Saxena Vs. State of M.P., I.L.R. (2019) M.P. 653*

– Section 227 & 228 – See – Penal Code, 1860, Sections 376 & 376(2)(n): *Sheikh Mubarik Vs. State of M.P., I.L.R. (2016) M.P. 1820*

– Section 227 & 228 and Penal Code (45 of 1860), Sections 294, 341, 307 & 323 – Attempt to murder – Framing of charge – Applicant gave a blow by sword which fell on the neck of the victim – His intention to cause death cannot be presumed – This apart, whatever may be the reason to use abusive language against the complainant, his grudge was mainly directed against the complainant and not against his wife – This also shows that he had no intention to cause death therefore charge u/s 307 of IPC is not made out – Revision allowed – Case remanded to Trial Court to reconsider the case afresh and frame charges in all other relevant sections of IPC except section 307: *Babu Vs. State of M.P., I.L.R. (2016) M.P. 1512*

– Section 227 & 228 and Penal Code (45 of 1860), Section 302/34 – Murder – Framing of charge – Three accused and deceased were cooking meals when altercation took place between them – When applicants were cleaning utensils, deceased was also nearby – Applicant No. 1, in spur of moment hit the deceased on his head and due to impact, the deceased fell down in well and died due to drowning – On seeing the deceased falling in well, all the three applicants fled away – Held – Even if entire prosecution story is accepted there appears to be no prior meeting of mind and no act was done in furtherance of common intention – No case is made out against applicants No. 2 & 3 – Charges framed against them are set aside: *Jassu @ Jasrath Vs. State of M.P., I.L.R. (2016) M.P. 1803*

– Section 227 & 228, Penal Code (45 of 1860), Sections 302, 304-B & 498-A r/w 34 and Evidence Act (1 of 1872), Section 32 – Framing of Charge – Dying Declaration – Charge framed against husband, mother-in-law, father-in-law, brother-in-law and sister-in-law – Held – Two dying declaration in the case, one written and one oral – If during trial, written dying declaration is discredited and the witnesses testifying about oral dying declaration withstands cross examination, oral dying declaration can form sole basis of conviction – Oral dying declaration is also admissible piece of evidence – Sufficient material to frame charge against husband – No material available on record against other applicants, hence discharged – Trial Court to proceed trial against husband – Revision partly allowed: *Kattu Bai Vs. State of M.P., I.L.R. (2017) M.P. 3122*

– Section 227 & 228 and Penal Code (45 of 1860), Section 306 – Framing of Charge – Abetment of Suicide – Meticulous examination of evidence is not necessary at the time of framing of charge, only prima facie case is to be seen – If the court comes to the conclusion that the commission of the offence is probable consequence, at the stage of framing of charge probative value material on record cannot be gone into – Held – In the present case, there is a matrimonial dispute and demand of money and there been intention and positive acts which has promoted the deceased to commit suicide – Charge cannot be quashed – Revision dismissed: *Rajesh Singh Vs. State of M.P., I.L.R. (2016) M.P. 2351*

– Section 227 & 228 and Penal Code (45 of 1860), Sections 409 & 467 – Framing of charge – Applicant was working as a Manager of a Cooperative Society – Misappropriation of amount – Applicant working as a Manager was fully responsible for maintenance of the book of accounts including cash book – Framing of charge against applicant is proper – Revision dismissed: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1510*

– Section 228 – Framing of Charge – Appreciation of Evidence – Held – At the stage of framing of charge, Court has to prima facie consider whether there is sufficient ground for proceeding against accused – Court is not required to appreciate the evidence and arrive at conclusion that material produced are sufficient for conviction – If court is satisfied that prima facie case is made out, then charge has to be framed: *Shobha Jain (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2555 (DB)*

– Section 228 – Framing of Charge – Held – While framing charge, trial Court has to form an opinion judicially for its prima facie satisfaction on basis of material available on record, that there is ground for presuming that accused has committed an offence – It is not expected to critically evaluate the material/evidence placed on record by prosecution: *Gyanchand Jain Vs. State of M.P., I.L.R. (2018) M.P. 1793*

– Section 228 – See – Penal Code, 1860, Section 107 & 306: *Rishi Jalori Vs. State of M.P., I.L.R. (2019) M.P. *28*

– Section 228 – See – Penal Code, 1860, Section 307: *Surendra Vs. State of M.P., I.L.R. (2019) M.P. *46*

– Section 228 – See – Penal Code, 1860, Section 376: *Pukhraj Singh Vs. State of M.P., I.L.R. (2016) M.P. 248*

– Section 228 – See – Penal Code, 1860, Section 498-A: *Jaspal Singh Sodhi Vs. State of M.P., I.L.R. (2016) M.P. 1239*

– Section 228 and Penal Code (45 of 1860), Section 302/34 – Framing of Charge – Requirement – Held – For framing charges u/S 228 Cr.P.C., Judge is not required to record detailed reason and hold an elaborate enquiry, neither any strict standard of proof is required, only prima facie case has to be seen – Upon hearing the parties and after considering allegations in charge sheet, Session Court found sufficient grounds for proceeding against accused persons – High Court erred in interfering with order framing charge – Impugned judgment set aside – Session Trial Case restored – Appeal allowed: *Bhawna Bai Vs. Ghanshyam, I.L.R. (2020) M.P. 788 (SC)*

– Section 228 and Penal Code (45 of 1860), Section 324 – Framing of Charge - Iron Rod – Whether dangerous weapon – Magistrate was directed to physically inspect the iron rod seized and after giving both parties an opportunity of being heard to record a finding by a reasoned order as to whether or not he consider the same to be a dangerous weapon and then to frame appropriate charge accordingly: *Rishin Paul Vs. State of M.P., I.L.R. (2016) M.P. 1514*

– Section 228, Penal Code (45 of 1860), Sections 294, 323/34 & 506 II and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(r), 3(1)(s) & 3(2)(va) – Word "Neech" – Framing of Charge – Held – The word "neech" does not indicate any specific caste or community or abuse to any specific caste – Such kind of words are used generally during disputes – Further held – Utterance in public gathering even by name of caste would not attract the offence under the Act of 1989 – No offence made out – Applicants discharged from the offences registered under the Act of 1989 – Revision partly allowed: *Bablu @ Rameshwar Prasad Vs. State of M.P., I.L.R. (2018) M.P. *101*

– Section 228 & 397 – Framing of charges – Held, the material and quality of evidence cannot be gone into – Revisional Court has limitations which don't empower to intervene at an interlocutory stage – All that has to be looked into at the time of framing of charge, is existence of prima facie case: *Devendra Singh Vs. State of M.P., I.L.R. (2016) M.P. 259*

– Section 228 & 482 – Framing of Charge – Held – At the time of framing of charge, Court is required to consider the material only with view to find out if there is any ground for "presuming" that accused has committed an offence and not for the purpose of arriving at conclusion that it is not likely to lead to conviction: *Jaiprakash Vaishnav Vs. State of M.P., I.L.R. (2018) M.P. 3001*

– Section 233 – Application for summoning Head Muharir of AJAK Thana and to summon Rojnamcha Sanha with original complaint filed by applicants – Rejection of – Held – Aforesaid documents can be produced only if there is an order by Court

– On perusal of photocopy of complaint it is clear that the same was received at AJAK Thana, so it is not baseless or vexatious and the applicants cannot be deprived to prove their defence – Revision petition allowed: *Awadh Narayan Vs. State of M.P., I.L.R. (2016) M.P. 580*

– Section 233 (1) & 233 (3) – Scope – Defence of Accused – Discretion of Court – Held – There may be witnesses who are relevant to conduct of accused's defence but whose presence may not be possible without intervention of Court and in such cases, once the accused has established the prima facie relevance of those witnesses, trial Court must come to the assistance of accused by issuing process to witnesses – Further held – If defence wants to produce its witnesses u/S 233(1) Cr.P.C., no discretion vest with trial Court to deny accused that opportunity – Discretion given to Court is only u/S 233(3) Cr.P.C. – Dismissal of application u/S 233(3) is an exception which has to be exercised by the Court by recording reasons – Impugned order set aside – Revision allowed: *Anup Chakraverty Vs. State of M.P., I.L.R. (2018) M.P. *60*

– Section 235 & 354 and 262nd Report of Law Commission, 2015 – Capital Punishment – Amendments in Cr.P.C. and conclusions and recommendations of Commission, enumerated and explained: *Anand Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. 1470 (DB)*

– Section 243(2) – Grounds on which application can be rejected – Held – The application u/S 243(2) of Cr.P.C. can be rejected only when the Court comes to a conclusion that the documents sought to be summoned are not relevant and the application has been filed to delay or vex the proceedings – Further held – Merely because the documents got produced through the court u/S 243(2), it would not mean that their effects cannot be seen – Merely summoning the documents u/S 243(2) would not mean that the accused is not required to prove them in accordance with law: *Shivshankar Mandil Vs. Shri G.S. Lamba, I.L.R. (2017) M.P. 231*

– Section 243(2) & 482 – Right of Defence – Counter case lodged between parties – Accused/petitioners filed application to call the MLC doctor in defence, who has been cited as a prosecution witness in the counter case – Application was dismissed – Challenge to – Held – Right to defence is a valuable right – For ensuring fair trial, opportunity to accused to call his defence witness is necessary – Trial Court directed to allow petitioner to summon MLC doctor – Petition allowed: *Jugal Das Vs. State of M.P., I.L.R. (2017) M.P. *139*

– Section 245/482 – Whole case of prosecution is based on the alleged use of word 'pure' on the bottle which can by no stretch of imagination amounts to misbranding – It is not the case of the prosecution that the sample taken from the

petitioner was an 'imitation' – Complaint Proceedings set aside while allowing application of the petitioner under section 245 Cr.P.C: *Sri Prakash Desai Vs. State of M.P., I.L.R. (2016) M.P. 1227*

– Section 251 – See – Electricity Act, 2003, Sections 138, 151 & 153: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Deependra Bhate @ Deependra Ghate, I.L.R. (2017) M.P. *126*

– Section 256 – Complaint dismissed in default of appearance – Magistrate should mention the reason that why he has no option but to dismiss the complaint: *Rajendra Kumar Jain Vs. Shriram Agrawal, I.L.R. (2016) M.P. 296*

– Section 256 – Non-appearance of complainant – Circumstances for exercise of power – Appearance of complainant or his counsel on previous dates of hearing – Interested in early disposal of the case – Case should not be dismissed for singular default of appearance: *Rajendra Kumar Jain Vs. Shriram Agrawal, I.L.R. (2016) M.P. 296*

– Section 256 – Non-appearance of complainant – Powers are discretionary to be exercised judiciously, fairly and for advancement of criminal justice and not for its impairment: *Rajendra Kumar Jain Vs. Shriram Agrawal, I.L.R. (2016) M.P. 296*

– Section 256 & 378(4) – Complaint u/S 138 Negotiable Instrument Act 1881, dismissed at defence stage due to non-appearance – In revision, Sessions Court set aside the dismissal and direction issued to dispose matter on merits – Held – Section 256 Cr.P.C. provides that when a complaint is dismissed in summon case, it amounts to acquittal, therefore appeal will lie under Section 378 (4) Cr.P.C. – Matter remanded back to revisional court for reconsideration – Revision allowed: *Narendra Kumawat Vs. Ranjeet, I.L.R. (2017) M.P. 159*

– Section 273 – Recording Evidence in Absence of Accused – Held – Trial Court erred in recording evidence of witness in absence of accused without any specific reasoned order, overlooking the mandatory provisions of Section 273 Cr.P.C. – Matter remanded to trial Court for examination and cross examination of witness in presence of accused and adjudication afresh: *State of M.P. Vs. Ravi @ Toli Malviya, I.L.R. (2020) M.P. 724 (DB)*

– Sections 273, 299 & 317 – Examination of Witness in Absence of Accused – Held – Apex Court concluded that section 273 opens with expression "Except as otherwise expressly provided…" and the only exception is that if accused remained absent for circumstances mentioned u/S 299 and 317 Cr.P.C., no examination or cross-examination of witnesses could be undertaken: *State of M.P. Vs. Ravi @ Toli Malviya, I.L.R. (2020) M.P. 724 (DB)*

– Section 293 – Expert Opinion – Cross Examination – Held – The Forensic Science Experts who gave the report were not called as witness to stand the cross-examination, therefore in terms of Section 293 Cr.P.C., the report is not open to question as the defence had the opportunity to cross examine the expert: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Section 293 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 21(a): *Ballu Savita Vs. State of M.P., I.L.R. (2020) M.P. *6*

– Section 300 – Double jeopardy – Respondent had lodged FIR against applicant and his parents u/s 498-A of IPC and they were acquitted – Second FIR lodged again on similar allegations – No man shall be put in jeopardy twice for one and same offence – Applicant cannot be prosecuted for same offence – Charge sheet quashed: *Ashish Vs. State of M.P., I.L.R. (2016) M.P. 273*

– Section 300 – See – Prevention of Corruption Act, 1988, Section 13(1)(d): *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

– Section 300 – Workers died in factory during work – Offences registered under Sections 287 & 304 A of IPC – Other case for same incident under Sections 36, 7(A), 32(B), 31, 73 read with Section 92 of Factories Act, 1948 – Fine of Rs. 1,05,000/- imposed under Factories Act – Held – Death and bodily injury occurred to workers during course of employment due to grave omission on the part of Occupier and Manager – Provisions of Factories Act being special law shall prevail over general law of IPC – Proceedings under Sections 287 and 304A of IPC quashed – Petitioners discharged: *Neeraj Verma Vs. State of M.P., I.L.R. (2016) M.P. 1829*

– Section 300 & 482 – See – Penal Code, 1860, Sections 337, 279 & 304-A: *Nadimuddin Vs. State of M.P., I.L.R. (2016) M.P. 316*

– Section 301 & 302 – See – Penal Code, 1860, Sections 376(2)(i), 376(2)(d), 363, 343 & 506: *Uma Uikey Vs. State of M.P., I.L.R. (2018) M.P. *69*

– Section 301(2) – Scope – Held – Provision provides that private counsel of complainant has liberty only to submit written arguments after closure of evidence, with permission of Court – Further, Court should be zealous to see that prosecution of an offender is not handed over completely to a professional person instructed by private party: *Anchal Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2395*

– Section 309 – Adjournment of Proceedings – Held – Day to day proceedings in a criminal trial is a rule and adjournment is an exception: *Kuldeep Singh Tomar Vs. State of M.P., I.L.R. (2018) M.P. 1261*

– Section 309 – Held – In criminal case of heinous nature, trial Court has to be mindful that for protection of witness and also in interest of justice, the mandate of

Section 309 Cr.P.C. has to be complied with and evidence should be recorded in continuous basis – In absence thereof, there is every chance of witnesses succumbing to pressure or threat of accused – Courts should be mindful of not giving long adjournments after commencement of evidence in serious criminal cases: *Doongar Singh Vs. State of Rajasthan, I.L.R. (2017) M.P. 2922 (SC)*

– Section 311 – Belated Application – Effect – Held – Right of cross examination closed on 26.05.17 and application u/S 311 Cr.P.C. filed on 09.01.18 – Delay in filing application is an important factor to be considered under the facts and circumstances of the case: *Kuldeep Singh Tomar Vs. State of M.P., I.L.R. (2018) M.P. 1261*

– Section 311 – Object and Scope – Held – The object underlying Section 311 of Cr.P.C. is that there should not be a failure of justice on account of mistake of any of the party in bringing valuable evidence on record – The Section is not limited only for the benefit of the accused but a witness can be summoned even if his evidence would support the prosecution case – However, the first part of the Section is discretionary – Further held – The Court is not empowered under the provisions of Cr.P.C. to compel either the prosecution or the defence to examine any particular witness but in weighing the evidence the court can take note of the fact that the best evidence has not been given and can draw an adverse inference – However in the facts of the present case where the prosecution witness has not supported the theory of 'last seen together' an application under Section 311 was filed to substitute another witness to prove circumstance of 'last seen together', which is not permissible, otherwise, there would be no end to the trial: *Kamlesh Diwakar Vs. State of M.P., I.L.R. (2016) M.P. 3427*

– Section 311 – Recall of Witness – Grounds – It was alleged that Trial Court has not dictated the exact version of witness as stated by him during cross examination – Counsel of applicant left the Court room in the mid of cross examination – Subsequently, application u/S 311 Cr.P.C. was filed which was rejected – Challenge to – Held – Neither in application u/S 311 nor in present application u/S 482 Cr.P.C., applicant has specifically mentioned and clarified that which question was put by his counsel and what was the reply of witness and what was dictated by Trial Court and how such dictation was contrary to the reply given by witness – In application, applicant merely disclosed that due to absence of counsel, cross examination could not be conducted – Further held – Affidavit of counsel filed in this petition seems to be an afterthought – Trial Court rightly dismissed the application – Application dismissed: *Kuldeep Singh Tomar Vs. State of M.P., I.L.R. (2018) M.P. 1261*

– Section 311 – Recall of Witness – Grounds – Recall of witness (prosecutrix) sought on the ground that her evidence was suspicious and was tutored

by her counsel – Application rejected – Challenge to – Held – Witness cannot be recalled unless and until Court comes to a conclusion that his/her further cross-examination is necessary for the just decision of the case – Applicant has not pointed out any circumstances to indicate that full opportunity was not granted to him to cross-examine the witness – A senior lawyer cross examined the witness – Nothing could be pointed out from deposition of prosecutrix as to how she narrated incorrect facts – Witness cannot be recalled merely on saying of accused – Application dismissed: *Rajesh Kushwah Vs. State of M.P., I.L.R. (2018) M.P. *57*

– Section 311 – Recall of Witness – Held – The only independent eye witness who is not related to deceased, was given up by prosecution – Although prosecution is entitled to exercise its exclusive right to decide as to which prosecution witness to be examined but trial Court in the process cannot remain as a mute spectator – In search of truth the importance of impartial eye witness assumes relevance – Apex Court's guidelines enumerated – Trial Court directed to consider the application filed by accused afresh – Impugned order set aside – Application allowed: *Annu @ Anil Vs. State of M.P., I.L.R. (2018) M.P. *100*

– Section 311 – Recall of Witness – Scope & Grounds – Held – Applicant filed application seeking recall of witnesses on the ground that senior counsel has been engaged in place of junior counsel – Mere change of counsel cannot be a ground to recall the witnesses for cross examination and is outside the scope of Section 311 Cr.P.C. - Application dismissed: *Veerendradas Bairagi Vs. Shreekant Bairagi, I.L.R. (2019) M.P. 1318*

– Section 311 – Recall of Witness – Stage of Trial – Grounds – Held – Jurisdiction u/S 311 Cr.P.C. can be exercised at any stage of any inquiry, trial or other proceeding by Trial Court till it signs the judgment – Grounds on which application was based are perfunctory where no reason is given as to why it is essential to recall the witnesses and what prejudice will cause to defence if they are not recalled – In present case, petitioners had elaborately cross examined the witnesses who are sought to be recalled for further cross-examination – Power u/S 311 Cr.P.C. can not be used for the purpose of filling up the lacuna left behind by the defence during cross examination – Application dismissed: *Laxminarayan Agrawal Vs. State of M.P., I.L.R. (2019) M.P. 494*

– Section 311 – Recalling of witness – Held – No application which will tantamount to the filling up the lacunae of the case could be permitted: *Soneram Rathore Vs. State of M.P., I.L.R. (2016) M.P. 873*

– Section 311 – Recalling of witness – Held – On an application for recalling of witnesses, trial court has to pass a speaking order that the prayer was made with

the purpose of causing delay or vexation or defeating the ends of the justice – Framing of charge u/S 376-A of IPC creates an extra burden upon accused and if the prayer of the appellant is not accepted for recalling of witnesses, then a prejudice is caused to the appellant for not being given the advantage of Section 217 of Cr.P.C. – In such circumstances, the High Court held that the accused cannot be convicted u/S 376-A of IPC: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Section 311 – Recalling of Witness – Revision against dismissal of application u/S 311 Cr.P.C. for re-examination of prosecutrix – Held – From statement of prosecutrix and the doctor, it is evident that effective and detailed cross examination of prosecutrix has been carried out by counsel of applicant – Opportunity cannot be granted to fill up the lacuna in evidence and to compel the witness to change her version – No need to recall the witness u/S 311 Cr.P.C. – Revision dismissed: *Roshan Vs. State of M.P., I.L.R. (2018) M.P. *66*

– Section 311 – Right of Accused – Amicus Curiae – Held – Where accused is given an option by Trial Court but if the same is not availed by him, then it cannot be said that in every circumstances, it is duty of Court to appoint amicus curiae – In the present case, applicant expressed specifically that he wants to be represented by counsel of his choice, Trial Court could not have appointed any other lawyer as amicus curiae – Prayer for recall of witness cannot be allowed merely on saying of accused – Reason for seeking recall of a witness must be bonafide and accused himself should not be responsible for creating a situation where Court is left with no other option but to close his right to cross examination: *Kuldeep Singh Tomar Vs. State of M.P., I.L.R. (2018) M.P. 1261*

– Section 311 – See – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d), 13(2) & 19: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Section 311 – See – Prevention of Corruption Act, 1988, Section 19: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Section 311 – See – Protection of Children from Sexual Offences Act, 2012, Section 34: *Umesh Kumar Vs. State of M.P., I.L.R. (2017) M.P. 1230*

– Section 311 and Penal Code (45 of 1860), Sections 304-B & 498-A r/w Section 34 – Examination of material witness – Dying Declaration recorded by Additional Tehsildar was not part of charge sheet – During trial, dying declaration produced on record of Criminal Case – Additional Tehsildar produced as a defence witness – Application u/S 311 of Cr.P.C. moved by applicant/accused for examining Additional Tehsildar as a defence witness was dismissed by trial Court on the ground that dying declaration being the document of prosecution, can be read in favour of

defence – Against which this application – Held – To prove the contents of the dying declaration, examination of Additional Tehsildar as a defence witness is a must as he is the person who has recorded the dying declaration – Order of Trial Court set aside – Application allowed: *Ashish Vs. State of M.P., I.L.R. (2017) M.P. *17*

– Section 311, Penal Code (45 of 1860), Section 363 & 376(2)(n) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 4 – Recall of witness – Grounds – Revision against dismissal of application of accused to recall the prosecutrix for re-examination – Held – Statement of prosecutrix shows that she was duly and effectively cross examined by counsel of applicant – It shows that applicant only wants to recall her to change her version in his favour malafidely – Exercise of power u/S 311 Cr.P.C. cannot be permitted to compel the witness to change her earlier statement – Further held – Since offence u/S 376 IPC is not compoundable u/S 320 Cr.P.C., trial Court rightly rejected the prayer – Revision dismissed: *Shyam @ Bagasram Vs. State of M.P., I.L.R. (2018) M.P. 1805*

– Section 311 & 319 – See – Prevention of Corruption Act, 1988, Section 19: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Section 311 & 319 – Stage of Trial – Term "inquiry" – Held – Apex Court concluded that legislative intent of the term "inquiry" used in Section 311 is identical to the use of term "inquiry" in Section 319 – As per Section 319, term "inquiry" relates to a stage preceding the framing of charge and is an inquisitorial proceeding – Powers u/S 319 cannot be whittled down to mean that same can only be used in the course of trial and not at the stage of an inquiry which precedes the trial: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Section 311 & 482 – Recall of witness – Document received subsequently using provisions of Right to Information Act – Application filed to recall the Complainant to confront him with the document, in which totally contrary story was narrated – Application for recall of Complainant for limited purpose and confront him with the documents received subsequently allowed: *Vindhya Vs. State of M.P., I.L.R. (2016) M.P. 2839*

– Section 311 & 482 – Recall of Witness – Stage of Trial – Grounds – Application filed at the stage of final arguments in a case which was 5 yrs. old – Held – Accused got the case adjourned for final arguments for more than a dozen times – While considering application filed u/S 311 Cr.P.C., Courts required to consider interests of victims/witnesses and prosecution alongwith all accused – Considering the concept of fair trial and interest of justice, a balance has to be struck between the two contrasting interests moreso when application filed at a very belated stage – Interest of justice also involves refraining from giving undue adjournments which may become

a necessary corollary, once application u/S 311 Cr.P.C. is allowed – No error in impugned order – Application dismissed: *Babulal Vs. State of M.P., I.L.R. (2019) M.P. *4*

– Section 313 – Admission of Offence by Accused – Any admission made by an accused in his examination u/S 313 Cr.P.C. cannot be made sole basis for conviction of the offence with which he is charged – Acquitted accused in criminal appeal no. 1398/2007 filed by the State, cannot be convicted u/S 12 of the Act upon the admission made by him in his examination u/S 313 Cr.P.C. even if the admissions are taken to be true at their face value without taking into account the background facts – Trial Court rightly acquitted the accused – Criminal Appeal filed by the State against acquittal fails and is dismissed: *Archana Nagar (Ku.) Vs. State of M.P., I.L.R. (2017) M.P. 1162 (DB)*

– Section 313 – Examination of Accused – Principle – Duty of Court – Held – Section 313 is based on principle of fairness – Court is under a legal obligation to put the incriminating circumstances before accused and solicit his response – Provision is mandatory in nature and castes an imperative duty on Court and confers a corresponding right on accused to have an opportunity to offer an explanation – Appellant did not avail this opportunity which was provided to him and did not offer any explanation as to how deceased sustained injuries: *Sunder Lal Mehra Vs. State of M.P., I.L.R. (2019) M.P. 903 (DB)*

– Section 313 – Examination of Accused – False information – Court ought to draw an adverse inference against the accused and such an inference shall be an additional circumstance to prove guilt of the accused: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Section 313 – Scope – Held – Statement of accused u/S 313 Cr.P.C. can be taken into consideration and it is permissible to use it when it corroborates the prosecution case: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Section 313 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18 & 54: *Rameshwar Vs. State of M.P., I.L.R. (2018) M.P. *47*

– Section 313 – See – Negotiable Instruments Act, 1881, Section 20: *Nicky Chaurasia Vs. Vimal Kumar, I.L.R. (2017) M.P. 236*

– Section 313 – See – Penal Code, 1860, Section 84 & 302: *Ramsujan Kol @ Munda Vs. State of M.P., I.L.R. (2017) M.P. *110 (DB)*

– Section 313 – See – Penal Code, 1860, Sections 302/34, 304-B/34, 498-A & 201: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 313 – See – Penal Code, 1860, Section 306: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

– Section 313 – See – Penal Code, 1860, Sections 489-B, 489-C & 120-B: *Shabbir Sheikh Vs. State of M.P., I.L.R. (2018) M.P. 1712 (DB)*

– Section 313 – See – Prevention of Food Adulteration Act, 1954, Sections 13(2), 16(1)(A)(i) & 20(1): *Manohar Vs. State of M.P., I.L.R. (2017) M.P. 2000*

– Section 313 – Statement of Accused – Adverse Inference – Held – Apex Court concluded that if accused give evasive and untrustworthy answers u/S 313 Cr.P.C. then it would be a factor indicating his guilt – False denial made by accused of established facts can be used as incriminating evidence against him – Manner in which appellant has answered the questions u/S 313 Cr.P.C., it raises adverse inference against him: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Section 313 – Statement of Accused in Defence – Held – Although maintaining silence by accused may not be a circumstance against him but where accused fails to explain incriminating circumstances or even fails to bring on record certain facts which are in his personal knowledge, then it can be said that in absence of any defence by accused in statement u/S 313, he fails to prove his defence: *Krishna Gopal Vs. State of M.P., I.L.R. (2018) M.P. 2207*

– Section 315 – See – Prevention of Food Adulteration Act, 1954, Sections 2(ix)(g), 7(ii), 16(1)(a)(ii) & 20-A: *Alkem Laboratories Ltd. (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. 1314*

– Section 317 – Recording Evidence in Absence of Accused – Held – Section 317 provides special provision for recording of evidence in absence of accused if he is represented by his pleader, but the condition precedent is, the reason for doing so should be recorded by the Judge: *State of M.P. Vs. Ravi @ Toli Malviya, I.L.R. (2020) M.P. 724 (DB)*

– Section 319 – Power to proceed against other persons – During investigation it was found that applicant was not present on spot – Material contradictions in the evidence of witnesses – Addition of additional accused warranted only when there is reasonable prospect of case against such accused ending in their conviction – Order under this Section cannot be passed only because first informant or one of witnesses seeks to implicate other persons: *Omprakash Vs. State of M.P., I.L.R. (2016) M.P. 254*

– Section 319 – Powers u/S 319 are discretionary and extraordinary and to be exercised sparingly and only where strong and cogent evidence is available against the person – Powers u/S 319 should not be used on mere opinion that some other

person may also be guilty of offence and it should also not be used in casual or cavalier manner: *Dharmendra Singh Vs. State of M.P., I.L.R. (2016) M.P. 3385*

– Section 319 – Practice and Procedure – Meaning of expression "Evidence" - Held - Two conflicting views appears to exist in two Apex Court judgments on the same point of meaning of expression 'Evidence' used in S. 319 Cr.P.C. – Judgment rendered by a Bench of larger composition shall prevail – Law laid down by the five Judge Bench in the case of Hardeep Singh will prevail upon the subsequent judgment rendered by Division Bench in Brijendra Singh's case: *Amar Singh Kamria Vs. State of M.P., I.L.R. (2018) M.P. 257*

– Section 319 – Requirement of Section 319 – It contemplates a situation where the evidence adduced by the prosecution not only implicates the other person, but is sufficient for the purpose of convicting that other person: *Dharmendra Singh Vs. State of M.P., I.L.R. (2016) M.P. 3385*

– Section 319 – See – Prevention of Corruption Act, 1988, Section 19: *Monika Waghmare (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1581 (DB)*

– Section 319 and 91 – Murder Case – Consideration of Evidence collected during Investigation and during Trial – Petitioners although implicated in the FIR were not been arrayed as accused in the charge-sheet because during investigation their plea of Alibi was found to be correct – During trial, involvement of petitioners were revealed in the testimony of witnesses - Complainant/victim filing application u/s 319 Cr.P.C. – Petitioners filed an application u/s 91 Cr.P.C. seeking production of documents on the basis of which investigating agency found their plea of alibi to be true – Application u/s 91 Cr.P.C. was dismissed – Held – Application u/s 319 is only maintainable when implicative evidence, documentary or oral having probative value more convincing than grave suspicion is brought on record during trial - If any evidence is considered during investigation process and is not brought on record between the stage of taking cognizance and commencement of trial, cannot be considered even for corroborative purposes while invoking S. 319 Cr.P.C. – Other evidence which has come on record between the stage of taking cognizance till the commencement of trial can only be used for corroborative purposes - No illegality committed by the trial Court – Petition dismissed: *Amar Singh Kamria Vs. State of M.P., I.L.R. (2018) M.P. 257*

– Section 319 & 190 – Comparison – While exercising powers u/S 319 Cr.P.C., Court has to prima facie form an opinion on the basis of evidence which has already come on record, whereby additional accused can be convicted whereas that is not the scope while exercising powers u/S 190 Cr.P.C.: *Uttam Chand Verma Vs. State of M.P., I.L.R. (2017) M.P. 1519*

– Section 320 – Application for compromise – Where to be filed – Held – The offences as specified in Section 320(2) Cr.P.C. can be compounded with the permission of court before which any prosecution of such offence is pending – Since in the present case, even the investigation is not complete and no charge sheet is filed, no case is pending before this court therefore, such application is not maintainable: *Monu @ Ranu Kushwaha Vs. State of M.P., I.L.R. (2017) M.P. 489*

– Section 320 – See – Penal Code, 1860, Section 324: *Suraj Dhanak Vs. State of M.P., I.L.R. (2016) M.P. 3140*

– Section 320 – See – Penal Code, 1860, Sections 406, 420 & 409: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Section 320 – See – Penal Code, 1860, Section 498-A: *Durga Bai Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 2391*

– Section 320 and Negotiable Instruments Act (26 of 1881), Section 138 – Compounding of Offence – Maintainability of Application – Appeal against acquittal was allowed by High Court whereby applicant was convicted and sentenced – On same very day, applicant filed application u/S 320 Cr.P.C. which was dismissed with liberty to approach appropriate forum – Applicant filed application before trial Court which was also dismissed – Challenge to – Held – This Court has become functus officio to deal with the matter any further as this Court has already passed the judgment – No such provision which entitles this Court to entertain such application after delivery of judgment: *Sureshchand Vs. Prakashchand, I.L.R. (2018) M.P. *99*

– Section 320 and Penal Code (45 of 1860), Section 498-A – Matrimonial Disputes – Criminal Complaints – Held – Criminal complaints arising out of matrimonial discord can be quashed on compromise, even if offences alleged are non-compoundable as such offences are personal in nature and do not have repercussions on society unlike heinous offences like murder, rape etc. – In present case, applicant convicted by trial Court – Appellate Court may consider compromise at time of passing the order of sentence: *Ramakant Vs. State of M.P., I.L.R. (2017) M.P. 3130*

– Section 320 and Penal Code (45 of 1860), Sections 498-A & 324 – Compounding of offence – Compromise deed filed jointly – Trial Court has no jurisdiction to compound – Offences are non compoundable: *Balendra Shekhar Mishra Vs. State of M.P., I.L.R. (2016) M.P. 583*

– Section 320 & 482 – Compromise – Grounds – Held – High Court ought to have appreciated that it is not in every case where complainant entered compromise with accused, there may not be any conviction – Such observations are presumptive – Prosecution still can prove the guilt by leading cogent evidence or medical evidences: *State of M.P. Vs. Dhruv Gurjar, I.L.R. (2020) M.P. 1 (SC)*

– Section 320 & 482 – Exercise of Inherent Jurisdiction – Powers of High Court – Scope, grounds & factors to be considered, discussed, explained and enumerated: *State of M.P. Vs. Laxmi Narayan, I.L.R. (2019) M.P. 1605 (SC)*

– Section 320 & 482 – See – Penal Code, 1860, Sections 406, 420 & 409: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Section 320 & 482 – See – Penal Code, 1860, Section 498-A: *Durga Bai Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 2391*

– Section 320 & 482 and Penal Code (45 of 1860), Section 307/34 & 308 – Quashment of Proceedings – Ground – Held – High Court quashed the proceedings on basis of compromise between accused and complainant, without considering the gravity and seriousness of offence and its social impact and also without considering that offences alleged were non-compoundable u/S 320 Cr.P.C. – High Court quashed the proceedings mechanically without considering the distinction between private/ personal wrong and a social wrong – Quashment of FIR on the ground that matter has been compromised and there is no possibility of recording conviction, is erroneous – Impugned orders quashed – Trial may proceed as per law – Appeals allowed: *State of M.P. Vs. Laxmi Narayan, I.L.R. (2019) M.P. 1605 (SC)*

– Section 320 & 482 and Penal Code (45 of 1860), Sections 420, 467, 468, 471 & 120-B – Compromise – Quashment of Proceedings – Gravity of Offence – Offence registered against applicants who are employees of Bank with allegation that on basis of forged documents they sanctioned loan of Rs. 60,000 – Subsequently, they filed application u/S 320 Cr.P.C. on the ground that they have compromised the matter – Application rejected – Challenge to – Held – Allegations against applicants are serious in nature and are not private in nature and have serious impact on the society – Proceedings cannot be quashed on the ground of compromise – Application rejected: *Anil Kumar Vs. State of M.P., I.L.R. (2018) M.P. 1579*

– Section 320 & 482 and Penal Code (45 of 1860), Section 498-A – Compounding of Offence – Compoundable and Non-compoundable Offences – Held – In compoundable offences, parties can enter into compromise at any stage of trial or appeal but in non-compoundable offences, if trial is pending, compounding can be permitted u/S 482 Cr.P.C. under guidelines issued by the Apex Court – Further held – If accused is convicted and sentenced for a non-compoundable offence by trial Court or appellate Court, then there is no question of sparing the convict – In such case, compromise can be considered in the interest of peace and amity by taking a liberal view with regard to sentence imposed – Application dismissed: *Ramakant Vs. State of M.P., I.L.R. (2017) M.P. 3130*

– Section 320 & 482, Penal Code (45 of 1860), Sections 307, 294 & 34, Arms Act (54 of 1959), Section 25/27 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11/13 – Compromise/Settlement – Grounds – Held – High Court failed to consider the seriousness of offence and its social impact and that the offences were against society at large and were non-compoundable u/S 320 Cr.P.C. – Accused facing several trials for serious offences – High Court, in exercise of powers u/S 482 Cr.P.C., without application of mind has materially erred in mechanically quashing the FIRs, by observing that in view of compromise there are no chances of recording conviction and thus failed to distinguish between private wrong and social wrong – Impugned judgments set aside – FIR/investigation/ criminal proceedings directed to be proceeded in accordance with law – Appeal allowed: *State of M.P. Vs. Dhruv Gurjar, I.L.R. (2020) M.P. 1 (SC)*

– Section 320(1) & (2) – See – Penal Code, 1860, Section 354: *Santosh Vs. State of M.P., I.L.R. (2018) M.P. *36*

– Section 320 (6) & 482 – Compounding of non-compoundable offence – Whether conviction & sentence recorded by the Trial Court, which is affirmed in appeal, can be set aside by the High Court u/S 482 – Held – No: *Vaseem Baksh Vs. State of M.P., I.L.R. (2016) M.P. 3112*

– Section 320 (6) & 482 – Compromise in criminal offence, if conviction is upheld, can be considered on the question of nature and quantum of sentence: *Vaseem Baksh Vs. State of M.P., I.L.R. (2016) M.P. 3112*

– Sections 320 (6) & 482 – Inherent Powers for compounding of non-compoundable offence – Accused convicted and sentenced – Exercise of powers u/S 482 of Cr.P.C. at appellate/revisional stage should not be made: *Vaseem Baksh Vs. State of M.P., I.L.R. (2016) M.P. 3112*

– Section 321 – Withdrawal from prosecution – Public Prosecutor filed application for permission to withdraw from prosecution on the ground that the matter is pending from 2009 and there has been no progress in the case – Trial Court rejected the application on the ground that in all seven prosecution witnesses have been examined therefore, it cannot be said that there is no progress in the matter – Held – Trial Court was justified in rejecting the application – Application dismissed: *Chitrakootram Vs. State of M.P., I.L.R. (2016) M.P. 2136*

– Section 321, Legal Services Authorities Act (39 of 1987), Section 20 and Penal Code (45 of 1860), Sections 294, 506 & 323/34 – Lok-Adalat – Whether powers u/S 321 of Cr.P.C. can be exercised by the Lok-Adalat for withdrawal of prosecution by the State Government – Held – No, the powers u/S 321 of Cr.P.C. cannot be exercised by the Lok-Adalat for withdrawal of prosecution, as the power u/S 321 of

Cr.P.C. can only be exercised by the regular Court after examining the merits of the case – Revision dismissed: *Ram Milan Dubey Vs. Ku. Vandana Jain, I.L.R. (2017) M.P. 952*

– Section 328 & 329 – See – Penal Code, 1860, Section 84 & 302: *Girijashankar Vs. State of M.P., I.L.R. (2018) M.P. 2946 (DB)*

– Section 329 – See – Penal Code, 1860, Sections 84, 302, 307 & 309: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Section 340 – Preliminary Inquiry – Scope & Applicability – Discussed & Summarized: *Vinod Raghuvanshi Vs. State of M.P., I.L.R. (2020) M.P. 2476*

– Section 340 – Procedure – Held – U/S 340 Cr.P.C., Court is not bound to make a complaint but such a course is to be adopted only if interest of justice requires and not in every case – Before filing complaint, Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into the offence u/S 195 (1)(b) IPC – In the instant case, CLB has neither recorded any satisfaction nor formed any opinion for initiation of such action/enquiry: *Rajiv Lochan Soni Vs. Rakesh Soni, I.L.R. (2018) M.P. 1247*

– Section 340 & 195 – Enquiry – Jurisdiction of Court – Held – In only glaring cases of deliberate falsehood where conviction is highly likely, Court should direct an enquiry: *Kusum Pathak (Smt.) Vs. Rampreet Sharma, I.L.R. (2019) M.P. 1111*

– Section 340 & 362 – Applicability – Held – Before directing prosecution of witnesses, Court has considered all aspects and concluded that perjury was deliberate – If Court reopens the entire judgment, such exercise would certainly come within ambit of Section 362 Cr.P.C., which is not permissible: *Shambhu Singh Chauhan Vs. State of M.P., I.L.R. (2020) M.P. 2675 (DB)*

– Section 340 & 362 – Recall & Review – Preliminary Enquiry – While deciding appeal in High Court, trial Court directed to prosecute prosecution witnesses for deliberately giving false evidence – Prayer for recall of direction – Held – It was not obligatory to conduct preliminary enquiry after giving opportunity of hearing to applicant – Even without preliminary enquiry, Court can initiate u/S 340 Cr.P.C. – Court after considering every aspect had formed a *prima facie* opinion – Mere absence of preliminary enquiry would not vitiate a *prima facie* opinion formed by Court – Case is hit by Section 362 Cr.P.C. – Application dismissed: *Shambhu Singh Chauhan Vs. State of M.P., I.L.R. (2020) M.P. 2675 (DB)*

– Section 340 & 482 – Delay & Laches – Held – Present application filed after about 2 years of passing of judgment – Application suffers from delay and laches: *Shambhu Singh Chauhan Vs. State of M.P., I.L.R. (2020) M.P. 2675 (DB)*

– Section 354(3) – See – Penal Code 1860, Section 302: *Kanhaiyalal Vs. State of M.P., I.L.R. (2019) M.P. 2575 (DB)*

– Section 357-A and Crime Victim Compensation Scheme (M.P.), 2015, Section 2(j) & 2(k) – Victim – Dependent – An employee of District Court during his service, committed suicide, for which the then JMFC was prosecuted for offence u/S 306 IPC – Petitioner, wife of deceased alongwith her two daughters and a son filed application for compensation which was dismissed – Challenge to – Held – Under the Compensation Scheme, District Legal Services Authority or State Legal Services Authority upon the recommendation received from the trial Court, Appellate Court, Session Court or the High Court or on receiving an application u/S 357-A(4) Cr.P.C., after holding enquiry through appropriate authority within two months as deemed fit may award adequate compensation – In the present case, wife of the deceased has been granted compassionate appointment, she is receiving family pension and dues of deceased like GPF and Insurance amount has also been paid to her, thus has been adequately compensated and rehabilitated – Two unmarried daughters and a son, who are also the crime victim and lost their father were not granted any compensation – So far as children are concerned, impugned order is set aside – Session Judge was directed to recommend accordingly for grant of compensation to children under the Scheme of 2015 – Revision partly allowed: *Praveen Banoo (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. *20*

– Section 357(3) – See – Motor Vehicles Act, 1988, Section 166: *Bhagirath Vs. State of M.P., I.L.R. (2020) M.P. 210*

– Section 360 and Public Gambling Act (3 of 1867), Section 13 – Conviction – Applicant seeking benefit u/S 360 of CrPC and praying to be released on probation – Held – While extending benefit of Section 360 Cr.P.C., nature of the offence is to be seen and that whether the offence committed is against the society at large – Gambling has become a menace to the peaceful society which adversely affects the financial position of the family of the persons involved in it – If a person looses money in gambling then it can be safely said that the money which could have been utilized for upbringing the children of the family or for looking after elder persons of the family has been misused – It affects the society at large – Benefit of Section 360 CrPC cannot be granted – Petition dismissed: *Sanjay Vs. State of M.P., I.L.R. (2017) M.P. *72*

– Section 362 – Judgment – Alteration – Scope – Held – Re-opening or entertaining an application except in exceptional circumstances is totally barred – Once High Court signed the judgment, it becomes functus officio, neither the Judge who signed the judgment nor any other Judges of High Court has any power to review, reconsider or alter it, except for correcting a clerical or arithmetical error: *Durga Prasad Vs. State of M.P., I.L.R. (2019) M.P. 1799*

– Sections 362, 437(5) & 439(2) – Interpretation – Held – Power not directly and expressly provided to a Court cannot be said to be impliedly provided u/S 437(5) and 439(2) Cr.P.C: *Aniruddh Khehuriya Vs. State of M.P., I.L.R. (2020) M.P. 2880*

– Section 362 & 439 – Modification/Alteration in Order – Power of Review – Held – Though bail order is an interlocutory order, but Cr.P.C. does not provide power of review to Courts exercising power under criminal jurisdiction – Section 362 is mandatory in nature and it provides that only clerical and arithmetical errors can be corrected in orders/judgments: *Aniruddh Khehuriya Vs. State of M.P., I.L.R. (2020) M.P. 2880*

– Section 362 & 482 – Bar u/S 362 – Exercise of jurisdiction u/S 482, when warranted – No provision in the Code of Criminal Procedure authorizing the High Court to review its orders passed in exercise of its revisional jurisdiction – Such power cannot be exercised under the cloak of Section 482 of the Code of Criminal Procedure: *Harish Kulshrestha Vs. Vikram Sharma, I.L.R. (2016) M.P. 2832*

– Section 362 & 482 – Recall/Review of Judgment – Scope – Application u/S 482 for recall/review of judgment on ground that when case was listed, it was overlooked by the Counsel in the cause list – Held – No provision in Cr.P.C. to recall/review the judgment – Court cannot re-consider its own judgment on merits again by re-appreciating/re-evaluating the findings – It can only be done when there is apparent mistake or error on face of the record – Application dismissed: *Durga Prasad Vs. State of M.P., I.L.R. (2019) M.P. 1799*

– Section 362 & 482 – See – Article 226: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Section 363, Penal Code (45 of 1860), Sections 376 (2)(h) & 302 and Evidence Act (1 of 1872), Section 3 – Circumstantial evidence – Dead body of prosecutrix was discovered in the house of appellant, deceased was last seen with the appellant, witnesses have stated that the appellant was offering Namkeen and Biscuit to the prosecutrix – This, statement is also supported by medical evidence – These circumstances are clear & cogent and indicates the hypothesis that appellant is guilty of the offences – Trial Judge has rightly convicted the appellant: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

– Section 363, Penal Code (45 of 1860), Sections 376 (2)(h) & 302 and Evidence Act (1 of 1872), Section 3 – Death reference – Rape with a minor girl and murder – Determination of age – Plea that age of the deceased was not ascertained by legal evidence – Kotwar of the village stated that the age of the deceased was six years same is also mentioned in Naksha Panchnama – Doctor has also mentioned the

age of the deceased in Post Mortem report – No cross-examination has been made in this regard – Therefore this plea is of no avail: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

– Section 363, Penal Code (45 of 1860), Sections 376 (2)(h) & 302 and Evidence Act (1 of 1872), Section 3 – Imposition of death sentence – After considering the mitigating circumstances that the appellant wanted to fulfil his sexual desire as a result of which death of the minor girl was caused – This case does not fall within the category of "Rarest of the rare case" – Extreme penalty of death should not be imposed – Therefore death penalty is commuted to imprisonment for life: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

– Section 363, Penal Code (45 of 1860), Sections 376 (2)(h) & 302 and Evidence Act (1 of 1872), Sections 142 & 154 – Evidence of hostile witnesses – May be considered if their statements have no inconsistency and the same are not contradictory – Statements are found supported by medical evidence and circumstantial evidence – Therefore, there is no reason to disbelieve them: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

– Section 372, Proviso – Right of Victim to Appeal – Amendment of 31.12.2009 – Date of Offence & Date of Order – Held – Apex Court concluded that cause of action to file appeal accrues in favour of victim only when order of acquittal is passed – If order has been passed after the date of amendment i.e. 31.12.2009, then victim has a right to appeal against acquittal and can also challenge conviction of an accused for lesser offence or imposing inadequate compensation – Date of offence has no relevance – In present case, date of judgment of acquittal is 01.10.2015 – Appeal is maintainable – Revision allowed: *Mahesh Sahu Vs. Shri Rakesh Sahu, I.L.R. (2019) M.P. *24 (DB)*

– Section 372 – See – Penal Code, 1860, Sections 341, 354(D)(1)(i), 506-II & 509: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Section 374 – Criminal Practice – Non Appealing Co-Convicts – Benefit of Acquittal – Held – In appeal, after consideration of entire evidence, if Court comes to the conclusion that there is no evidence against the non appealing co-convicts, benefit of acquittal can also be extended to them: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

– Section 378 – Appeal against Acquittal – Held – Once leave granted by High Court challenging order of acquittal, High Court entitled to appreciate the evidence to record its own finding of either affirmance or reversal: *Pooranlal Vs. State of M.P., I.L.R. (2017) M.P. 2915 (SC)*

– Section 378 (3) – Application for leave to appeal against acquittal – Grounds of interference – Court has to be very much cautious while interfering in an application for leave to appeal unless there are compelling and substantial grounds to interfere with the order of acquittal: *Gourishankar Nema Vs. Prabhudayal Nema, I.L.R. (2017) M.P. 765 (DB)*

– Section 378 (3) – Leave to Appeal against Acquittal – Grounds & Practice – Held – Apex Court has concluded that in appeal against acquittal, two views are possible and the one which goes in favour of acquittal has to be adopted – Further held – Even otherwise, it is settled law that appellate Court may only interfere in appeal against acquittal where there are substantial and compelling reasons to do so: *Rabiya Bano Vs. Rashid Khan, I.L.R. (2017) M.P. 2579 (DB)*

– Section 378 (3) – See – Penal Code, 1860, Section 326: *State of M.P. Vs. Keshovrao, I.L.R. (2017) M.P. 2480 (DB)*

– Section 378 (3) – See – Penal Code, 1860, Section 376: *State of M.P. Vs. Ramratan @ Bablu Loni, I.L.R. (2016) M.P. 2633 (DB)*

– Section 378 (3) – See – Penal Code, 1860, Section 376: *State of M.P. Vs. Salman Khan, I.L.R. (2016) M.P. 2413 (DB)*

– Section 378 (3) – See – Penal Code, 1860, Sections 498 (A), 304 (B), 302/302 r/w Section 34, 306/306 r/w Section 34: *State of M.P. Vs. Komal Prasad Vishwakarma, I.L.R. (2016) M.P. 3199 (DB)*

– Section 378(3) and Penal Code (45 of 1860), Section 304-B & 498-A – Leave to Appeal Against Acquittal – Ingredients of Offence – Appreciation of Evidence – Held – FSL report proves that deceased consumed poison and then hanged herself but it is not found proved that poison was given by somebody else and she was put to hang by someone else – Independent witness admitted that there was no dowry demand by respondents at the time of marriage and thereafter also – He also admitted that the room wherein deceased was found hanged was closed from inside and there was no injury on person of deceased – He also admitted that false case lodged in order to fetch money from accused persons and Rs. 2 lacs were demanded to withdraw the case – Only general and omnibus allegations against accused regarding dowry demands and ill treatment – Trial Court rightly acquitted the accused – No ground to grant leave to appeal – Petition dismissed: *State of M.P. Vs. Mukesh Kewat, I.L.R. (2019) M.P. 489 (DB)*

– Section 378 (3) & 372, Penal Code (45 of 1860), Section 304-B, 498-A and Dowry Prohibition Act (28 of 1961), Section 3(1) & 4-A – Application Against Acquittal – Wife committed suicide by hanging herself in the matrimonial house within

one year of marriage – Case was registered against husband and his relatives – Trial concluded and only husband was convicted and rest of the relatives were acquitted – Challenge to – Held – The acquittal is based on the scrutiny of evidence available on record – Prosecution witnesses made omnibus allegations against the relatives of husband – Further held – Sisters of the husband are married and are living separately with their husband far away in Jhansi, Lucknow and Bangalore whereas deceased was living at Sagar – Apex Court has held that in case of death of a woman in her matrimonial home, it is a common feature that incident is exaggerated by the relatives of the deceased and it is a common practice to implicate all members of the family of husband – In the present case, there is nothing on record to establish demand of dowry by the relatives of husband – Application is devoid of merits and is hereby dismissed: *Vinod Kumar Sen Vs. Smt. Shanti Devi, I.L.R. (2017) M.P. *85 (DB)*

– Section 378 (3) & 393 – Application against acquittal whether maintainable in view of the fact that the appeal filed by victims before the Sessions Court, in which the State was not made party, has already been dismissed on merits on 06.03.2014 – Held – The order passed by the Sessions Court upon an appeal is final – No further appeal by the State would lie against the impugned order of acquittal – However, if the State is having any grievance against the final order of the appellate Court on account of not impleading the State as a party, the State may file revision or may invoke the provisions of Section 482 of Cr.P.C. or Article 226/227 of the Constitution of India – Application dismissed – All criminal Appellate Courts of State were directed to ensure compliance of provisions of Section 385 of Cr.P.C. with regard to issuance of notice to the State in such matters: *State of M.P. Vs. Rampal, I.L.R. (2016) M.P. 3188*

– Section 378(iv) & 394(2) – Abatement of appeal – Appeal filed by complainant already admitted – On account of the death of the complainant whether the same will be abated in terms of Section 394(2) of Cr.P.C. – Held – Word "Appellant" used in Section 394(2) of the Code denotes the appellant who is accused not complainant – Since the appeal is already admitted during the life time of the complainant/appellant, appeal shall not abate and it will be decided on its merits: *Hajarilal Hanotiya Vs. Sachin Singh Thakur, I.L.R. (2016) M.P. 1780*

– Section 389 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18(b) & 37: *Jagdish Vs. State of M.P., I.L.R. (2017) M.P. 684*

– Section 389 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8(c) r/w 15 & 35: *Mukesh Vs. State of M.P., I.L.R. (2017) M.P. 381*

– Section 389 – Suspension of sentence – Considerations are – The antecedents of convict & whether release of convict would be detrimental to the

public interest: *Raghuwar Singh @ Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 2549 (DB)*

– Section 389 – Suspension of sentence – Granted – Ground – Substantial part of sentence suffered i.e. 12 years – Little possibility of final hearing of appeal in near future – Not misused temporary bail – Absence of criminal antecedents – These factors out-weigh the gravity of offence and the manner of commission of offence: *Raghuwar Singh @ Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 2549 (DB)*

– Section 389 – Suspension of sentence – Primary factors for consideration enumerated: *Raghuwar Singh @ Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 2549 (DB)*

– Section 389 – Suspension of sentence – Substantial part of sentence suffered – No hope of final hearing of appeal in near future – Factors to be considered – Period of custody, post conviction behavior, instances of misuse of bail, age, possibility of final hearing, efforts for final hearing: *Raghuwar Singh @ Raghuveer Singh Vs. State of M.P., I.L.R. (2016) M.P. 2549 (DB)*

– Section 389, Penal Code (45 of 1860), Sections 363, 366-A & 376(2) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – Cancellation of Bail – Application by Prosecutrix – Locus Standi – Held – Once right of appeal has been given to a victim, it shall include all ancillary rights which are attached with the right to appeal – Such right of appeal will include right to seek cancellation of bail if victim is aggrieved against such an order: *Mahesh Pahade Vs. State of M.P., I.L.R. (2018) M.P. *84 (DB)*

– Section 389(1) – See – Representation of the People Act, 1951, Section 8: *Shakuntala Khatik Vs. State of M.P., I.L.R. (2020) M.P. 2468*

– Section 389(1) – Suspension of Conviction – Held – Power of suspension of conviction is vested to Appellate Court u/S 389(1) CrPC should be exercised in very exceptional case having regard to all aspects including ramification of such suspension – Apex Court concluded that stay of conviction can only be granted in exceptional circumstances and no hard and fast rule or guideline can be laid down as to what those exceptional circumstances are: *Shakuntala Khatik Vs. State of M.P., I.L.R. (2020) M.P. 2468*

– Section 394 – Application to Continue the Appeal by Relative of Deceased Appellant – Ground – Limitation – Appellant convicted by trial Court and during pendency of appeal, he expired – Appellant's son filed application u/S 394 Cr.P.C. to continue the appeal – Delay of 91 days – Held – Proviso to Section 394 has given

right to near relative of appellant/accused who dies during pendency of appeal, to continue the appeal by making application before appellate Court within 30 days of death of appellant – Proviso is made for those exceptional cases where the interest may apart from merely sentimental but pecuniary also – It's object is also to remove the stigma that may attach to appellant by continuing the appeal – In the present case, delay of 91 days being bonafide is condoned – Applicant permitted to prosecute the appeal – I.A. allowed: *Binay Chand Ekka Vs. State of M.P. (Through CBI), I.L.R. (2018) M.P. *50*

– Section 395 (1) – Criminal Reference – Question arises that whether Special Court is competent to try the counter cases not involving the offence under the Special Act, committed by Magistrate directly to it even with the restriction u/S 193 of Cr.P.C. – Held – (i) Magistrate can not commit a case, arising out of the same incident, cross to the case pending before the Special Court (SC/ST) directly to Special Court – (ii) In those cross cases the Special Court (SC/ST) is even with the restriction u/S 193 of Cr.P.C., is not competent to take cognizance directly without the case being committed: *In References Vs. State of M.P., I.L.R. (2016) M.P. 3142 (DB)*

– Section 397 – Revision – Notice to accused – Applicant was arrayed as accused in complaint – Complaint u/s 138 N.I Act was dismissed without issuing notice to applicant – Revisional court without issuing notice to applicant set aside the order of Trial Magistrate and directed to take cognizance – Held – Valuable right to defend was denied to applicant by revisional court – Order set aside – Matter remanded back: *Jayant Thirani Vs. Gyanchand Dubey, I.L.R. (2016) M.P. 900*

– Sections 397, 398, 399 & 401 – Remand Order – Observations on merit by the Sessions Court while remanding the matter – Sessions Court order should have been construed only as a remand order for further enquiry – The observations were only a justification for the remand and did not amount to taking cognizance – Further held – Revisional court erred in influencing the Magistrate Court to keep the findings of Sessions Court in mind while considering the case on remand – High Court, without appreciating the dichotomy between taking cognizance and issuing summons, quashed the complaint itself on a wrong interpretation of law – Impugned order of the High Court cannot be sustained in the eyes of law: *Rajendra Rajoriya Vs. Jagat Narain Thapak, I.L.R. (2018) M.P. 1045 (SC)*

– Sections 397, 399, 401 & 482 – Exercise of power – Doctrine of election – Where the options available under the law are mutually opposed to each other – Person can either elect to challenge by way of revision before Court of Sessions or High Court, or approach the High Court u/S 482 Cr.P.C. directly to quash the order – Application u/S 482 Cr.P.C. maintainable: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Section 397 & 401 – Order framing charge u/S 376-D & 344 of IPC is assailed on the ground that no specific role of the applicant has been ascribed and there is no ground for presuming that he had formed a common intention with co-accused to commit rape upon prosecutrix – Held – Though it has not been specifically stated that applicant had any role in locking, threatening and beating the prosecutrix but he did not oppose the same nor did he do any thing to disassociate himself from the group rather he continued to be a part of the group and live under the same roof for a long period of about 4 months wherein, the prosecutrix was repeatedly raped by co-accused – Thus, he was part of the group & in such situation he shall also be deemed to have committed the offence of rape – Since the charge of offence u/S 376-D has not been framed properly, therefore, trial Court is directed to re-frame the charges in the light of above observation: *Shriram Singol Vs. State of M.P., I.L.R. (2017) M.P. *29*

– Section 397 & 401 – Quashing of Charge – Held – As per FIR, the allegation against the applicant Sub-Engineer is that he prepared false muster roll and on the basis of which payment has been made by Sarpanch and Secretary of Panchayat – The applicant is the first person, who is responsible for preparing false muster roll, on the basis of which, criminal misappropriation of Government money was done – He is the main accused, who issued false report for valuation of work – There is no perversity, illegality, irregularity or impropriety in the impugned order of framing of charge – Revision dismissed: *Jagdish Prasad Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3121 (DB)*

– Section 397 & 401 – Revision Against Acquittal – Held – Appellants alongwith other group members were been chased by policemen and while running, appellant suddenly turned around and fired a shot – In such a situation, other persons cannot be held vicariously liable for such action – No evidence whether other accused persons incited appellant or commended him for shooting the deceased – Trial Court rightly acquitted other accused persons – Revision dismissed: *Deshpal Vs. State of M.P., I.L.R. (2017) M.P. 2717 (DB)*

– Section 397 & 401 – Revision Against Acquittal – Jurisdiction of High Court – Limited Powers – Held – In revisionary jurisdiction against acquittal, High Court is not supposed to enter into merits of matter and re-appreciate the evidence and substitute one possible view for another – High Court can set aside the order of acquittal even at the instance of private parties, but this jurisdiction should be exercised in exceptional cases – List of such circumstances, enumerated and discussed: *Deshpal Vs. State of M.P., I.L.R. (2017) M.P. 2717 (DB)*

– Section 397 and 401 – Revision against framing of charge – On the ground that no offence against applicant of having entered into a conspiracy with co-

accused to commit rape upon the prosecutrix, is made out as there was no meeting of minds regarding commission of crime – Held – Applicant choses to provide keys of his house which was deserted at that time to co-accused – Circumstances in which the applicant made keys available to co-accused raises a strong suspicion that he was hand-in-glove with co-accused – His act went beyond mere connivance which amounted to facilitation of the crime of rape – Thus there is no ground to quash the charge – Since applicant had aided the commission of crime, Trial Court is directed to consider framing of charge u/S 376 r/w Section 109 of the IPC also in the alternative: *Mohd. Akbar Vs. State of M.P., I.L.R. (2017) M.P. 154*

– Section 397 & 401 – Revision – Jurisdiction & Powers of Revisional Court – Held – Court while exercising powers u/S 397 and 401 Cr.P.C. cannot re-appreciate the findings of fact unless and until same are found to be perverse: *Sardar Singh Vs. State of M.P., I.L.R. (2018) M.P. 2270*

– Section 397 & 401 – Revision – When High Court may exercise and may not exercise power of revision – Circumstances explained: *Abhilasha Vs. Ashok Dongre, I.L.R. (2016) M.P. 266*

– Section 397 & 401 – See – Penal Code, 1860, Sections 294 & 307: *Shrish Kumar Mishra Vs. State of M.P., I.L.R. (2016) M.P. 2577*

– Section 397 & 401 – See – Penal Code, 1860, Sections 306 & 498-A: *Ramswaroop Vs. State of M.P., I.L.R. (2016) M.P. 2568*

– Section 397 & 401 and Explosive Substances Act (6 of 1908), Sections 4, 5 & 7 – Framing of Charge u/S 4, 5 of the Act, 1908, assailed on the ground that the consent of the District Magistrate as envisaged u/S 7 of the Act, 1908 has not been filed alongwith the charge sheet – Consent by District Magistrate was granted and was filed on 13.08.2015 and charge was framed on 28.09.2015 – Held – Trial commence only at the stage of framing of charge and not when cognizance is taken – Court may proceed up to the stage of framing of charge without consent of District Magistrate – Charge can be framed after consent being granted and placed on record – Trial Court has ample power and discretion to receive any document before framing of charge – All documents are not required to be filed alongwith the final report: *Raju Adivasi Vs. State of M.P., I.L.R. (2016) M.P. 2821*

– Section 397 & 401 and M.P. Prisoners (Attendance in Courts) Rules, 1958, Rule 6 – Travelling expenses – In Jail Manual, there is no provision for travelling expenses for appearing in examination – To pursue study & to pursue other talent of writing articles is a fundamental right – Applicant is under-trial and was a registered student prior to his arrest – Looking to his previous performance in other examination, direction of Trial Court to deposit the travelling expenses upto examination centre is

set aside, as the same appears to be very harsh – Revision allowed: *Shankar Vs. State of M.P., I.L.R. (2016) M.P. *9*

– Section 397 & 401, Negotiable Instruments Act (26 of 1881), Section 138 and High Court of Madhya Pradesh Rules, 2008, Rule 48 – Maintainability of Revision – Trial Court convicted the Applicant/accused for offence u/S 138 of the Act of 1881 – In appeal, the conviction was upheld and appeal was dismissed – Applicant/accused neither paid the amount nor surrendered before the trial Court and filed this revision – Held – This Court granted bail to the applicant but even then she neither surrendered before the trial Court nor she furnished the bail – This Court cancelled the bail even then she did not surrender before the Court – Present revision filed by the applicant without surrendering before the Appellate Court is not maintainable in the light of Rule 48 of the M.P. High Court Rules 2008: *Simmi Dhillo (Smt.) Vs. Jagdish Prasad Dubey, I.L.R. (2018) M.P. *27*

– Section 397 and 401 and Penal Code (45 of 1860), Section 306 – Abetment of suicide – Applicant alongwith 6 other persons charge sheeted for abetment to commit suicide on the basis of suicide note of deceased – Held – No clear and specific allegation against applicant that he instigated, goaded, urged, provoked, incited or encouraged the deceased to commit suicide – Merely goading or persuading the deceased to refund the alleged amount of loan may not itself amount to an act of inciting or instigating u/S 107 r/w 306 IPC – Deceased instead of pursuing legal remedy, committed suicide – No case of abetment to commit suicide – Charge u/S 306 IPC set aside – Revision allowed: *Dinesh Vs. State of M.P., I.L.R. (2017) M.P. 162*

– Section 397 & 401 and Penal Code (45 of 1860), Section 306 – Quashing of charges sought on the ground that there is no evidence at all – Umadeo, lodger of the FIR, disclosed ignorance as to the cause that compelled the deceased to commit suicide and material on record never made out a *prima facie case* – Held – There is no evidence to show that the applicants were proximate cause or that the applicants had goaded, instigated or assisted the deceased in committing suicide – To be charged u/S 306 of Indian Penal Code, it would be essential for the prosecution to establish *prima facie* that the actions of the accused were directly responsible for instigating the deceased to commit suicide – Trial Court erred in framing charges – Applicants discharged: *Ramnaresh Vs. State of M.P., I.L.R. (2016) M.P. 3127*

– Section 397 & 401 and Penal Code (45 of 1860), Section 498A r/w 34 – Marriage solemnized on 17/05/2002 – No cruelty in relation to demand of dowry committed in short duration of two months – Held – No cruelty of serious nature alleged and there is no manifest error of law – Revision against acquittal dismissed: *Abhilasha Vs. Ashok Dongre, I.L.R. (2016) M.P. 266*

– Section 397 r/w 401 – Criminal Revision – Revision against the order of rejection of the order of the cognizance – What the court will consider at the time of taking the cognizance – Prior to exercising the power u/S 204 of the Cr.P.C. it is required to ensure that there is a sufficient ground to proceed to issue the summons to the police – The term "sufficient ground" is nothing but the satisfaction to the magistrate that essential ingredients of the offence alleged are made out from the reading of the allegation contained in the complaint u/S 200 of Cr.P.C. and the supporting statement u/S 202 of Cr.P.C: *Ram Rati Vs. State of M.P., I.L.R. (2016) M.P. 3377*

– Section 397 r/w 401 and Prevention of Corruption Act (49 of 1988), Section 7 – Revision against framing of charge – Complaint against applicant – Demanded Rs. 300/- from each employee against release of their arrears of 6th Pay Commission – Prima facie case made out against the applicant – Trial Court framed charge accordingly – Held – Trial Court is not required to weigh the evidence produced alongwith the charge sheet & there is strong suspicion against the applicant from the material produced on record – Order framing charge upheld – Revision partly allowed: *Bahadur Singh Gujral Vs. State of M.P., I.L.R. (2016) M.P. 3390 (DB)*

– Section 397 r/w Section 401 – See – Penal Code, 1860, Sections 307, 294 & 323/34: *Nawab Khan Vs. State of M.P., I.L.R. (2016) M.P. *11*

– Section 397/401 – Accused fraudulently deceived complainant by making a false representation with regard to his age and has intentionally induced the complainant to accord her consent to the marriage – Held – Necessary ingredients – It cannot be said that the complaint as filed, does not disclose the ingredients of cheating as defined u/s 415 of the IPC – However, allegations cannot be taken at its face value, being inherently improbable, which can be arrived at without referring to the defence: *Nilofer Khan (Smt.) Vs. Mohd. Yusuf Khan, I.L.R. (2016) M.P. 882*

– Section 397/401 – Framing of charges – Challenged on the strength of letter written by the prosecutrix to S.H.O. of police station contending that applicant's father has agreed to accept her as daughter-in-law and the applicant is also ready to marry her – Held – Prosecutrix has nowhere stated in the letter written to S.H.O. or in her statement recorded u/s 164 of the Cr.P.C. that she has levelled false allegation against the applicant – Merely because she has developed friendly understanding with the applicant, prosecution of the accused cannot be stopped – Since the charges of rape and criminal intimidation are on record, applicant cannot be discharged – Revision is dismissed: *Shivendra Tripathi Vs. State of M.P., I.L.R. (2016) M.P. 1202*

– Section 397/401 – Grant of maintenance – Order rejecting application by Judicial Magistrate First Class on the ground that the respondent was living separately

without any just and proper cause was set- aside by Revisional Court – Held – Maintenance cannot be denied on the ground that the husband has been acquitted from the charges u/s 498-A of the IPC or on account of dissolution of marriage between the parties – It is obligatory on the part of the husband to maintain his wife – No interference is called for – Revision dismissed: *Narayan Datt Tiwari Vs. Smt. Laxmi Bai Tiwari, I.L.R. (2016) M.P. 890*

– Section 397/401 – Quashing of charge – Police seized 32 bottles of Cosome and 38 bottles of Codex syrup from the possession of co-accused – It is alleged that the same were supplied by the applicant to co-accused for Sale – Question for consideration is that whether above drugs fall within the ambit of "Manufactured drug" or "Psychotropic substance" punishable u/s 8(b) r/w section 21(b) of the NDPS Act – Held – Since both syrups contained Codeine Phosphate in proportion of 10 milligrams per 5 millilitres means 10 milligrams per dose unit, which is permissible in view of Entry No. 35 of the Notification – Same does not fall within the ambit of manufactured drug – Therefore, even if the entire allegation and documents filed with charge sheet are taken at their face value and true, no offence as alleged is made out – Applicant is discharged – Revision petition allowed: *Shiv Kumar Gupta Vs. State of M.P., I.L.R. (2016) M.P. 876*

– Section 397/401 – Revision against framing of charge u/S 307 of IPC – Nature of injury is one of the factors and not the sole factor to decide whether *prima facie* an offence u/S 307 is made out – Grave suspicion regarding complicity of the accused in alleged offence, sufficient to frame charge – No legal or factual error in framing charge – Application dismissed: *Annapurna Nath Vs. State of M.P., I.L.R. (2017) M.P. 421*

– Section 397/401 – Transportation of Explosive substance – Explosive substance was being transported to Bhilwara – Trucks entered into the State of Madhya Pradesh – Offence was registered merely on the ground that specific route passing from State of M.P. was not mentioned in statutory forms – Held – Licensee is only required to inform the Superintendent of Police and Collector of respective district, which was done – No provision in statutory form to specify the route – Company is a licensed manufacturer – Truck was having National Permit and authorised to transport explosive – No sufficient ground was present for proceeding against the applicants u/s 9 (B)(1-B) of Explosive Act 1884 and Section 5 of Explosive Substances Act and other relevant rules – Applicants no. 2 & 3 are discharged – Revision allowed: *Kasturnath Vs. State of M.P., I.L.R. (2016) M.P. 572*

– Sections 397, 401 & 319 – Order issuing arrest warrant u/S 319 of Cr.P.C. assailed on the ground that the applicant has been implicated as an accused subsequently on the application filed by a private person and not by the victim or the

prosecution, no opportunity of hearing has been afforded and the Lower Court erred by issuing arrest warrant instead of issuing summons – Held – (A) Implication of accused u/S 319 of Cr.P.C. – Since there is sufficient evidence on record to presume that the applicant accused has also committed the aforesaid offence who was not made accused in the case – He could be tried together (B) Scope of Section 319 of Cr.P.C. – Court is bound to consider only the material came before Court during the inquiry or trial as evidence as required u/S 319 of the Cr.P.C. – Power u/S 319 of Cr.P.C. can be exercised by the court suo motu or on application by someone including the accused already before it (C) Opportunity of hearing – Applicant has no right to be heard before issuing summons u/S 319 of Cr.P.C. (D) Issuance of non-bailable warrant – There is nothing on the record in which instead of summoning, non-bailable warrant is required to be issued – Hence, summons ought to have been issued against the applicant – Direction relating to issuance of non-bailable warrant is set aside: *Mangilal Vs. State of M.P., I.L.R. (2016) M.P. 3371*

– Sections 397, 401 & 319 – Revision – Second application u/S 319 – First application was withdrawn – Held – Second application on the basis of evidence recorded by the Court and based on additional material available to the Court is tenable – No illegality and irregularity committed by the trial Judge while allowing the application u/S 319 Cr.P.C. filed by the prosecution – Revision dismissed: *Naresh Vaswani Vs. State of M.P., I.L.R. (2016) M.P. 2079*

– Sections 397, 401 & 439(2) – Cancellation of Bail – Sought on the ground that the respondent no. 1 violated the terms and conditions of bail, tried to alter the evidence and threatened the witness – Held – As cancellation of bail jeopardizes the personal liberty of the individual, power of cancellation should be exercised with care and in proper case – Impugned order does not indicate any adversity – There is no violation of terms and conditions of order granting bail – Cancellation of the same is not justified – Revision is dismissed: *Gopi V. Varti Vs. Mahesh Prasad, I.L.R. (2016) M.P. 2095*

– Section 397 r/w Sections 401, 398 & 399 – Scope of Criminal Revision – Section 398 has to be read along with other sections which are equally applicable to revision petitions filed before the Sessions Court – Section 398 only deals with a distinct power to direct further inquiry, whereas Section 397 r/w Section 399 and Section 401 confers power on the revisionary authority to examine correctness, legality or propriety of any findings, sentence or order – Powers of the revisionary court have to be cumulatively understood in consonance with Sections 398, 399 & 401 of Cr.P.C: *Rajendra Rajoriya Vs. Jagat Narain Thapak, I.L.R. (2018) M.P. 1045 (SC)*

– Section 397 & 482 – See –Prevention of Corruption Act, 1988, Sections 7 & 13(1)(d): *V.K. Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2561 (DB)*

– Section 397 (2) – Interlocutory order – Test to determine whether the order rejects the plea of the accused on a point which when accepted will conclude the particular proceeding and whether the order substantially affects the rights of the parties – If answer of any one is affirmative, the order would not be interlocutory order – Bar of the Section 397(2) would not be attracted: *Akhtar Uddin Vs. State of M.P., I.L.R. (2017) M.P. 984*

– Section 397 (2) – Revision against framing of charge – Maintainability – Order framing charge is not an order which if passed in favour of the accused would terminate the proceedings, but also decides substantial rights of the parties – Not an interlocutory order – Revision is maintainable: *Akhtar Uddin Vs. State of M.P., I.L.R. (2017) M.P. 984*

– Section 401(2) – Notice/ Opportunity of Hearing – Held – Order of remand by High Court to the trial Court against Company cannot be sustained as the order was passed without giving an opportunity of hearing as contemplated u/S 401(2) of the Code, moreso when Company was not convicted by trial Court: *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

– Section 408 and Penal Code (45 of 1860), Section 406 – Trial Court held that Court at Ujjain has no jurisdiction to entertain complaint for offence u/s 406 of IPC and directed to transfer the case to the Court of JMFC, Khachrod – Order attained finality – Application under Section 408 of Cr.P.C. dismissed by Sessions Judge on the ground that parallel Court has already passed the transfer order, and it has no power to take different view – No irregularity by revisional Court – Revision dismissed: *Sadhna Kothari (Smt.) Vs. Shri Abhay Kumar Dalal, I.L.R. (2016) M.P. 262*

– Section 427 – Whether the provision of Section 427 of Cr.P.C. can be invoked in two separate and independent criminal proceedings – Held – No: *Kalu Vs. State of M.P., I.L.R. (2016) M.P. 2099*

– Section 436 & 439(2) – Bail – Subsequent Addition of Charge – Effect – Held – Accused released by police on bail u/S 436 Cr.P.C. for bailable offences – Subsequently, on addition of non-bailable offence in charge sheet, accused has to surrender before the Court – Police has a right to arrest the accused, there is no requirement of law for police to apply for cancellation of bail u/S 439(2) Cr.P.C. – Application dismissed: *Hemraj Lodhi Vs. State of M.P., I.L.R. (2018) M.P. *103*

– Section 436A and Penal Code (45 of 1860), Section 380 – Detention – Computation of Time – Held – Period of computation of one half of maximum sentence u/S 436A commenced from the date of arrest of applicant – Maximum jail sentence u/S 380 IPC is seven years and detention undergone by applicant is more than

3½ years – Applicant ought to have been released on bail mandatorily on his personal bonds with or without surety – Bail granted: *Hyat Mohd. Shoukat Vs. State of M.P., I.L.R. (2020) M.P. 2174*

– Sections 437, 438 & 439 – Grant/Denial of Bail – Guidelines – Held – Supreme Court held that an important facet of criminal justice administration in the country is the grant of bail being the general rule and the incarceration of a person in prison or a correction home as an exception – Unfortunately, some of these basic principles appears to have lost sight because of which more and more persons are being incarcerated for longer periods – This does not do any good to our criminal jurisprudence or to our society – Humane attitude is required to be adopted by a Judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody: *T.V.S. Maheshwara Rao Vs. State of M.P., I.L.R. (2018) M.P. 1012*

– Sections 437, 438 & 439 and Penal Code (45 of 1860), Section 457 & 380 – Bail – Principle & Grounds – Allegation of recovery of two stolen katta of gram (chana) from house of applicant – Held – There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits – The basic concept "Bail is rule and jail is exception" should continue – Basis of bail lies in principle that there is a presumption of innocence of a person till he is found guilty – Application allowed: *Jeetu Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. *54*

– Section 437 & 439 – Bail Applications – Delay in Trial – Held – In present cases, till date not a single witness has been examined – Accused persons are in jail since a long period – Looking to inordinate delay in recording statement of witnesses, applicants granted bail – Further held – An expeditious examination of prosecution witnesses is the only way to ensure that rights of accused and interest of society are balanced in equal measure, subserving the interest of justice – Guidelines issued for Courts below to expedite recording of prosecution evidence – Applications allowed: *Rambahor Saket Vs. State of M.P., I.L.R. (2019) M.P. 214*

– Section 437 (1) & 437 (6) – See – Interpretation of statutes: *Bhagwan Vs. State of M.P., I.L.R. (2016) M.P. 3402*

– Sections 437(3), 438 & 439(1) – Bail Conditions – Community Services – Held – As per Section 437(3) CrPC, Court can impose "any other conditions in the interest of justice" over accused by way of community service and other related reformatory measures and same can be "Innovated" also but same must be as per his capacity and willingness, that to voluntarily – Onerous and excessive conditions cannot be imposed so as to render the bail ineffective: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Sections 437(5), 439(1)(b), 439(2) & 482 – Modification/Alteration in Order – Held – Judicial Magistrate cannot alter or modify the conditions of bail order passed by it – Same can be modified or altered by Session Court or High Court exercising powers u/S 439(1)(b) Cr.P.C. – Magistrate, after deciding bail application becomes functus-officio, thus he rightly refused to modify the bail order passed by him: *Aniruddh Khehuriya Vs. State of M.P., I.L.R. (2020) M.P. 2880*

– Section 437(6) – Grant of Bail – Entitlement – Held – There are 17 criminal cases registered against applicant – As per criminal background, applicant is a habitual offender – Further, as several cases are registered against applicant, it is not possible to produce accused before more than one Court in a particular day – Court cannot be blamed for non-recording of evidence – Applicant rightly denied benefit of bail – Application dismissed: *Raman Lodhi Vs. State of M.P., I.L.R. (2019) M.P. 1930*

– Section 437 (6) – Release on bail – Factors for consideration – Certain principles enumerated: *Bhagwan Vs. State of M.P., I.L.R. (2016) M.P. 3402*

– Section 437(6) and Constitution – Article 21 – Protection of Fundamental Rights – Speedy Trial – Held – Provision of Section 437(6) Cr.P.C. is unambiguous in its intent to protect the fundamental right of the accused under Article 21 of the Constitution by taking cognizance of his right to a speedy trial – Section 437(6) Cr.P.C. unequivocally mandates the release of such a person after the end of sixty days from the date fixed for recording evidence – His continued incarceration is an exception to be exercised for reasons to be recorded by Magistrate – Right of accused to a speedy trial is an inviolable right directly linked with his right to life and personal liberty: *Pramod Kumar Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1329*

– Section 437 (6) and Excise Act, M.P. (2 of 1915), Section 34(2) – Non Conclusion of Trial within 60 days – Right of Bail – Offence u/S 34(2) of the Act of 1915 was registered against petitioner for possessing 1000 bulk litres of illicit liquor – He filed application u/S 437(6) Cr.P.C. praying bail on the ground that trial was not concluded within 60 days from the first date when matter was fixed for evidence – Application was dismissed – Challenge to – Held – Seizure memo indicates that petitioner was preparing illicit liquor and a huge quantity was seized from his possession – Order sheet shows that when prosecution witnesses appeared in Court, counsel for accused refused to examine them on the ground that accused was not produced from custody – This amounts to delay in progress of trial attributable to accused – Magistrate has used his discretion rightly and has given cogent reasons for not allowing the application – Accused cannot be allowed to take advantage of his own mistake – Petition dismissed: *Ishwar Prasad Vs. State of M.P., I.L.R. (2017) M.P. 1756*

– Section 437 (6) and Penal Code (45 of 1860), Sections 380 & 401 – Release on bail – Reason – Trial could not be concluded within the period of 60 days from first

date fixed for evidence – Application u/S 437 (6) of Cr.P.C. moved for release on bail – Rejected by Trial Court – Affirmed by Revisional Court – Challenge as to – Held – The applicants are tried for stealing large amount of gold & diamond jewellery & cash from a running train & its substantial part has been recovered, so offence is not an ordinary one but it is grave, applicants are resident of far away place (Bihar) – Facing trial in 11 similar offences – Members of inter-state gang – Habitual offenders – Delay is attributable to one of the accused who had applied for being treated as a Juvenile, so weighty ground exist for denial of bail u/S 437 (6) of Cr.P.C. – No interference in impugned order called for – Application u/S 482 of Cr.P.C. dismissed: *Bhagwan Vs. State of M.P., I.L.R. (2016) M.P. 3402*

– Section 437 (6) and Penal Code (45 of 1860), Sections 380, 411 & 457 – Application u/S 437(6) of Cr.P.C. filed for granting of bail on the ground that after lapse of 60 days as prescribed, the trial by the Magistrate could not be concluded – Provisions are not mandatory but directory – The Magistrate has full power to take into consideration – (1) The nature of allegations – (2) Whether delay is attributable to the accused or to the prosecution and – (3) The criminal antecedents of the accused – Trial Magistrate ordered that benefit of provision may not be extended to the accused – Not shown any abuse of the process of the Court – Order just and proper – Application u/S 482 dismissed: *Aasif @ Nakta Vs. State of M.P., I.L.R. (2016) M.P. 2391*

– Section 437(6) and Penal Code (45 of 1860), Sections 418, 420 & 423 – Grant of Bail – Grounds – Applicant filed bail application u/S 437(6) Cr.P.C. before Magistrate on the ground that trial has not concluded within 60 days from the first day fixed for evidence – Application was dismissed on the sole ground based on the gravity of offence – Challenge to – Held – Applicant is in judicial custody since 26.09.17 and there is no finding that applicant caused the delay in recording of evidence – Provisions of Section 437(6) Cr.P.C. are mandatory in nature and is salutary, engrafted into Cr.P.C. looking to the right of accused to a speedy trial – In the instant case, stipulated period of 60 days has expired, thus application u/S 437(6) Cr.P.C. ought to have been allowed – Bail granted to applicant – Factors to be considered while dealing with application u/S 437(6) Cr.P.C., discussed and guidelines laid down – Application allowed: *Pramod Kumar Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1329*

– Section 437(6) & 482 – Grant of Bail – Right of Accused – Entitlement – Held – Accused becomes entitled to apply for bail if trial of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for evidence in the case – This Court has earlier concluded that under the proviso, after recording reasons in writing, Magistrate has a right to refuse the bail even after 60 days from date of framing charge, even if entire evidence is not recorded: *Raman Lodhi Vs. State of M.P., I.L.R. (2019) M.P. 1930*

SYNOPSIS : Section 438

1. Absconding/Police Declaring Award

– Section 438 – Anticipatory Bail – Maintainability of Application – Farari Panchnama & Police Declaring Award – Effect – Held – Even if police has declared award or prepared farari panchnama even then application u/S 438 for anticipatory bail is maintainable – However, it is to be seen on merits that whether application deserves to be considered and allowed as per factors enumerated in Section 438 Cr.P.C. itself: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

2. After Filing of Charge-Sheet

– Section 438 – Anticipatory bail – Granting of – Where the accused has not been arrested by the Investigating Agency nor been subjected to custodial interrogation – Case for grant of bail – After filing of charge sheet – Application for bail — Denial of bail without adequate cause and sufficient reasons for pretrial incarceration, would result in infringement of civil liberties of the accused: *Rajendra Kori Vs. State of M.P., I.L.R. (2016) M.P. 3422*

– Section 438 – Anticipatory Bail – Maintainability of Application – Filing of Charge-Sheet – Effect – Held – Application u/S 438 Cr.P.C. is maintainable even after filing of charge-sheet or till person is not arrested: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

3. Application by Juvenile

– Section 438 and Penal Code (45 of 1860), Section 11 – Anticipatory Bail – Term "any person" – Held – The word "any person" as referred in Section 438 Cr.P.C. and as defined in Section 11 IPC gives liberty to a child in conflict with law to prefer anticipatory bail u/S 438 Cr.P.C: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

4. Conditions

– Section 438 – Anticipatory Bail – Conditions for grant of Anticipatory bail discussed: *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

5. Entitlement / Factors & Parameters

– Section 438 – Anticipatory Bail – Entitlement – Held – If petitioners/ accused persons not arrested during investigation, it does not mean that they are entitled to anticipatory bail as allegations against petitioners of exploiting the admission process are quite serious: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

– Section 438 – Anticipatory Bail – "Tenability of Application" & "Entitlement" – Held – "Tenability of application" and "Entitlement to get bail" are different – If application is not tenable, Court cannot consider the facts of the case and bound to reject the application outright on ground of tenability but if application is tenable, then Court will consider the merits, facts and other circumstances of the case: *Rajni Puruswani Vs. State of M.P., I.L.R. (2020) M.P. 1477*

– Section 438 – In the offence involving punishment upto 7 years imprisonment, the police may resort to extreme step of arrest only when the same is necessary and the applicant does not co-operate in the investigation – The applicant should first be summoned to co-operate in the investigation – If the applicant co-operates then the occasion of arrest should not arise: *Rai Singh Jadon Vs. State of M.P., I.L.R. (2016) M.P. *34*

– Section 438 and Penal Code (45 of 1860), Section 304-B/34 & 498-A – Anticipatory Bail – Ground of Parity – Held – Parity cannot be the sole ground for granting bail even at stage of second or third or subsequent bail applications – Court is not bound to grant bail on ground of parity where the order granting bail to co-accused has been passed in flagrant violation of well settled principles of granting bail or if it is not supported by reasons – Applicant is husband and the main accused – Considering the gravity of offence and allegations and material available on record, anticipatory bail cannot be granted – Application dismissed: *Neeraj @ Vikky Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1796*

– Section 438 and Penal Code (45 of 1860), Section 306/34 – Anticipatory Bail – Grounds – Incident on 03.09.2018, FIR registered on 11.10.2018 whereas applicant's name introduced in list of accused on 07.01.2019 – Held – Although deceased was daughter-in-law of applicant but she was living separately with her husband – Independent witnesses including family members of deceased nowhere stated against applicant – Allegations are in respect of abetment and not of homicide

or some heinous nature of crime – Applicant, a lady of 55 yrs. and does not bear any criminal antecedents – Application was filed much before farari panchnama was prepared – Application allowed: *Puspa Bai Vs. State of M.P., I.L.R. (2019) M.P. 1311*

– Section 438 and Penal Code (45 of 1860), Sections 376, 386 & 506 – Anticipatory Bail – Held – On false promise of marriage, initially physical intimacy developed between applicant and complainant, later both entered into wedlock and lived together comfortably for some days – No criminal antecedents of applicant – Presence of applicant can be ensured by marking his attendance before investigating officer for investigation – Application allowed: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

– Section 438, Penal Code (45 of 1860), Sections 419, 420, 467, 468, 471 & 120-B and Recognised Examination Act, M.P. (10 of 1937), Sections 3 & 4 – Anticipatory Bail – "VYAPAM Scam" – Media Trial – Media starts a parallel investigation in the studios of various TV channels and this often pollutes the free and fair atmosphere which a Judge is entitled to while discharging his onerous duties, so Courts ought to save themselves from being influenced by Media hype: *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

– Section 438, Penal Code (45 of 1860), Sections 419, 420, 467, 468, 471 & 120-B and Recognised Examination Act, M.P. (10 of 1937), Sections 3 & 4 – Anticipatory Bail – VYAPAM Scam – Petitioner is father of co-accused – Disclosure by co-accused u/S 27 of Indian Evidence Act, 1872 that petitioner gave a sum of Rs. 1,75,000/- to a middle man for arranging a solver to appear in place of co-accused in PMT 2008 – On this revelation, offence is registered against the petitioner – Hence, application for Anticipatory Bail – Difference of opinion between Hon'ble Judges – Matter placed on orders of Hon'ble the Chief Justice as per Chapter IV Rule 11 of M.P. High Court Rules & Orders – Grounds – No recovery as per disclosure u/S 27 of Evidence Act – Statement u/S 27 is inadmissible in evidence, middle man having died so link broken, solver not arrested etc. – Held – Evidence collected so far against the applicant is prima facie not enough, no antecedents of applicant, solver not yet arrested, co-accused middle man has died and there is no possibility of applicant fleeing from justice, so applicant entitled to Anticipatory Bail subject to stringent conditions – Bail Application allowed: *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

– Section 438, Penal Code (45 of 1860), Sections 420, 467, 468, 471, 201 r/w 120-B, Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2), Information Technology Act (21 of 2000), Section 43 r/w 66 and Recognised Examination Act, M.P. (10 of 1937), Section 3-D(1) & (2) – Anticipatory Bail – Grounds – Nature and Gravity of Accusation – Allegation of manipulations to block

State Government quota seats in Private Medical Colleges – Grave and serious allegations of wrongful admission of large number of students otherwise than on merit for monetary consideration – Gravity of accusation is glaring and in view of the seriousness of allegations which have wide ramifications on cause of professional education in State, petitioners not entitled to concession of pre-arrest bail – Applications dismissed: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

– Section 438, Penal Code (45 of 1860), Section 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Anticipatory Bail – Discretion – Scope & Grounds – Held – While considering application for anticipatory bail, Court shall consider possibility of settlement between parties as an essential fact and exercise its discretion in a judicious manner and not as a matter of course or as a matter of rule – Further, it is not mandatory for Court to refuse anticipatory bail in all cases: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– Section 438, Penal Code (45 of 1860), Section 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Anticipatory Bail – Guidelines – Powers of High Court – Held – High Court as a superior Court having powers of supervision possess the power to advice/direct to subordinate Court by judicial pronouncements – Regarding matter related to offence u/S 498-A IPC and u/S 3/4 of the Act of 1961, if guidelines given in order dated 02.07.2019 are fulfilled, anticipatory bail should not be ordinarily refused: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– Section 438, Penal Code (45 of 1860), Section 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Anticipatory Bail – Held – Court specifically used the words "ordinarily not to be refused" – Such directions by Court are not mandatory in nature: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– Section 438 – Anticipatory Bail – Factors & Parameters – Discussed and enumerated: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 438 – Anticipatory Bail – Factors and parameters enumerated by Apex Court discussed: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

6. Maintainability of Application

– Section 438 and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/22, 29, 36-A(3) & 37 – Anticipatory Bail Application – Maintainability – Held – No specific provision under the Act of 1985, ousting jurisdiction of High Court to entertain application u/S 438 Cr.P.C. – Section 36-A of the Act of 1985 does not explicit oust the jurisdiction of High Court to entertain such application for bail –

Further held – Present application was filed on 10.07.17 whereas complaint was filed on 12.07.17, thus it cannot be said that accused was absconding prior to filing of bail application – Anticipatory bail granted – Application allowed: *Ravi Jain Vs. Central Bureau of Narcotics, I.L.R. (2017) M.P. *121*

7. Personal Liberty

– Section 438 and Constitution – Article 21 – Personal Liberty – Held – Personal liberty of individual as ensured by Section 438 Cr.P.C. is embodiment of Article 21 of Constitution in Cr.P.C., therefore scope and legislative intent of Section 438 Cr.P.C. is to be seen accordingly: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

8. Procedure of Arrest

– Section 438, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(2)(Va), 3(1)(d) & 18 and Penal Code (45 of 1860), Sections 294, 323 & 506/34 – Anticipatory Bail – Procedure of Arrest – Offence registered against appellants u/S 294, 323, 506/34 IPC and u/S 3(2)(Va) & 3(1)(d) of the Act of 1989 – Appellants filed anticipatory bail application which was dismissed – Appeal – Held – There is an averment in the FIR with regard to commission of offence under the Act of 1989 and there is evidence on record to support the allegations – No material to conclude that FIR was lodged malafidely – In view of the provision of Section18 of the Act of 1989 appellant not entitled to get benefit of anticipatory bail but at the same time accused cannot be denied protection available under law regarding unjustified and unwarranted arrest – Before arresting an accused, it is the duty of police officer to examine and record reasons of arrest in writing subject to scrutiny of Magistrate/Court – In the present case, nature of offence is not very severe and prima facie, appellant's arrest is not warranted for purpose of investigation and his presence may be secured during trial by directing him to appear before Magistrate/Court in case of filing of charge-sheet – It is expected from arresting officer to follow the procedure and guidelines laid down by the Supreme Court regarding arrest of accused – Appeal disposed of: *Ajeet Jain Vs. State of M.P., I.L.R. (2018) M.P. 1213*

9. Transit Bail/Limited Duration

– Section 438 – Transit Bail – Concept & Object – Held – A transit bail is an anticipatory bail for a limited duration which enables an individual residing within territorial jurisdiction of High Court to seek such bail to avoid arrest by police of another state where FIR has been registered against him so that he will get time to move to that particular state seeking regular bail: *Saurabh Sangal Vs. State of M.P., I.L.R. (2020) M.P. 1786*

– Section 438 – Transit Bail – Grounds – Held – Nowadays in India, looking to advancement in Information and Communication Technology, emails, use of smart phones etc., contacting a lawyer in another state, sending documents to lawyer or payment of fee of lawyer etc, is no longer a harrowing experience, thus practice of transit bail is of no relevance and have ceased to have any utility – Application not maintainable and is dismissed: *Saurabh Sangal Vs. State of M.P., I.L.R. (2020) M.P. 1786*

10. Miscellaneous

– Section 438 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

– Section 438 – See – Penal Code, 1860, Section 153-A: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 438 – See – Penal Code, 1860, Sections 376(2)(N), 342, 506 & 190: *Ramkumar Vs. State of M.P., I.L.R. (2018) M.P. 2254*

– Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & (s): *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(w)(i): *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

• **– Section 438 & 439** and Penal Code (45 of 1860), Sections 147, 148, 149, 427, 336, 353, 153, 153-A, 440, 120-B, 188, 333 & 440 – Bail – Grounds – Applicants staged a public procession/rally in respect of a rape case which went violent and caused damage to public/private properties and grievous injuries to police personnel – Allegation of raising anti national slogans – Eight FIR lodged by various complainants – Held – After perusing case diary, documents and statement of witnesses, it would be premature to comment on merits – Bail granted: *Jaheeruddin Vs. State of M.P., I.L.R. (2018) M.P. 2056*

– Section 438(1) – Filing of Charge-sheet – Effect – Held – Anticipatory bail is available to accused even after filing of charge-sheet, if accused is not a proclaimed offender and is not deliberately avoiding his arrest and if factors enumerated in Section 438(1) Cr.P.C. are satisfied – In present case, said factors are satisfied: *Puspa Bai Vs. State of M.P., I.L.R. (2019) M.P. 1311*

– Sections 438(1)(iii), 82 & 83 – Proclaimed Offender – Held – Unless a person against whom warrant has been issued or if such warrant could not be executed because of his abscondance or concealment, then he can be proclaimed as Absconder – In present case, said process has not been given effect to – It cannot be said that applicant was a proclaimed offender or was avoiding arrest: *Puspa Bai Vs. State of M.P., I.L.R. (2019) M.P. 1311*

– Section 439 – Bail – Ground of de-novo trial – Record reconstructed after destroyed in fire – Delay not occasioned by accused – Entitled for bail: *Mohd. Sheru Vs. State of M.P., I.L.R. (2016) M.P. 937*

– Section 439 – Bail – Object – To secure the appearance of the accused at the time of trial – It is neither punitive nor preventive: *Mohd. Sheru Vs. State of M.P., I.L.R. (2016) M.P. 937*

– Section 439 – Grant of bail – Delay in trial – Inordinate and unexplained – Not attributable to the accused – Entitled for bail: *Mohd. Sheru Vs. State of M.P., I.L.R. (2016) M.P. 937*

– Section 439 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/21 & 37: *Ranjan Vs. State of M.P., I.L.R. (2019) M.P. 230*

– Section 439 – See – Penal Code, 1860, Section 420/34: *T.V.S. Maheshwara Rao Vs. State of M.P., I.L.R. (2018) M.P. 1012*

– Section 439 and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/21 – Bail – Grounds – CCTV Footage – Case of prosecution is that applicants were arrested from city area of Jabalpur on 17.05.2018 on account of possession of "Smack" - Held – Applicants submitted that factually they were arrested on 16.05.2018 from Jabalpur Railway Station when they were travelling from Allahabad to Mumbai – In this respect, they produced CCTV footage of Railway Station, relevant photographs, reservation tickets and leave letter from employer which are clinching in nature and ignoring the same would amount to closing eyes from reality – Bail granted – Application allowed: *Rahul Yadav Vs. State of M.P., I.L.R. (2018) M.P. *74*

– Section 439 and Penal Code (45 of 1860), Section 376 – Rape on Pretext of Marriage – Bail – Grounds – Held – Allegation of intercourse/rape on the pretext of marriage can only be decided after the evidence is led by the parties – Accused persons entitled for bail as per the law laid down by the Supreme Court in (2013) 7 SCC 675 – Bail granted – Applications allowed: *Lalji Chaudhary Vs. State of M.P., I.L.R. (2018) M.P. 1830*

– Section 439 and Penal Code (45 of 1860), Sections 420, 177, 181, 193, 200 & 120-B – Bail – Held – Three bail applications rejected by High Court, appellant in

custody for more than a year – Closure report was filed twice by police, still High Court declined bail only because trial Court was yet to accept the said report – Bail is rule and jail is exception – Bail should not be granted or rejected in mechanical manner as it concerns liberty of person – Considering nature of allegations and period spent in custody, appellant deserves to be enlarged on bail – Appeal allowed: *Jeetendra Vs. State of M.P., I.L.R. (2020) M.P. 1530 (SC)*

– Section 439, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) and Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Section 3/4 – Bail Application – Maintainability – Jurisdiction of Court – Held – POCSO Act would get precedence over Atrocities Act – When accused is tried under Atrocities Act as well as POCSO Act simultaneously, Special Court under POCSO Act shall have jurisdiction and if bail application is allowed or rejected u/S 439 CrPC by Special Court then appeal shall not lie u/S 14-A(2) of Atrocities Act but only application u/S 439 CrPC shall lie: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 439(1)(b) & 482 – Modification/Alteration in Order – Held – For modification in bail order, petitioner ought to file application u/S 439(1)(b) Cr.P.C. but has filed application u/S 482 Cr.P.C. – Without entering into technicalities, petitioner being a poor person and is in jail inspite of bail order, condition to deposit Rs. 75,000 in CCD, imposed in bail order is deleted – Application disposed: *Aniruddh Khehuriya Vs. State of M.P., I.L.R. (2020) M.P. 2880*

– Section 439(2) – Cancellation of Anticipatory Bail – Jurisdiction of Court – Grounds – Anticipatory bail granted by Sessions Court – Applicant filed this petition for cancellation of bail before High Court – Held – As per the law laid down by the Apex Court, this Court has jurisdiction to entertain this petition for cancellation of bail filed directly before this Court – Petitioner cannot be relegated to the Court of Sessions – Further held – In the present case, dispute arose between applicant and accused basing on a routine commercial transaction between buyer and seller – Respondents/ accused persons are not habitual offenders – No ground for cancellation of bail is made out – Application dismissed: *Kapil Kourav Vs. State of M.P., I.L.R. (2018) M.P. *43*

– Section 439(2) – Cancellation of Bail – Bail obtained on basis of forged medical certificates – Offence registered against respondent No. 1 – In an earlier bail application before this Court, she filed certificate of doctor showing that on the date of incident she was been hospitalized – Bail was granted – Complainant filed this application for cancellation of bail – Held – Police has inquired the matter and found that certificate issued by the doctor was a false certificate and respondent No. 1 knowingly well produced the same before this Court to grab the bail orders – She

has played fraud on the Court – Order granting bail is recalled – Copy of order sent to concerned authorities for necessary action against the persons guilty – Respondent No. 1 directed to immediately surrender before trial Court – Application allowed: *Mukesh Parashar Vs. Smt. Ragini Pandey, I.L.R. (2018) M.P. *44*

– Section 439(2) – Cancellation of bail – Breach of condition – Merely registration of the subsequent offence is not enough to be ground of cancellation of bail unless the said offence crystallizes into framing of charge: *Balveer Jatav Vs. State of M.P., I.L.R. (2016) M.P. 2084*

– Section 439(2) – Cancellation of Bail – Breach of the condition imposed on bail – Merely lodging of the first information report does not amount to the commission of an offence and it is only an allegation – Whether the offence has been committed prima facie or not is considered at the time of framing of charges – Once the charges have been framed for subsequent offence, it means the condition of bail order is violated, which leads to the cancellation of bail: *Vikash Raghuvanshi Vs. State of M.P., I.L.R. (2016) M.P. 2861*

– Section 439(2) – Cancellation of Bail – Held – After the release of respondent No. 2 on bail, at least three more criminal cases have been registered against him by police – He misused the liberty granted – Bail earlier granted liable to be and is cancelled – Respondent directed to surrender immediately before trial Court – Application allowed: *Premnarayan Yadav Vs. State of M.P., I.L.R. (2019) M.P. *9*

– Section 439(2) – Cancellation of Bail – *Suo Motu* Exercise of Power – Held – Apex Court concluded that High Court can also *suo motu* exercise power u/S 439(2) Cr.P.C: *In the matter of State of M.P. Vs. Deshraj Singh Jadon, I.L.R. (2019) M.P. *53*

– Section 439(2) – Cancellation of bail – The power to cancel the bail order is not vested with the Subordinate Court – If the bail order is passed by the Superior Court, then the Subordinate Court will not have the power to cancel the bail order until or unless the Superior Court expressly empowers/grants liberty to the Subordinate Court to cancel the bail on arising of certain eventuality: *Balveer Jatav Vs. State of M.P., I.L.R. (2016) M.P. 2084*

– Section 439(2) – See – Penal Code, 1860, Sections 363, 366-A & 376: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 439(2) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) – Cancellation of Bail – Maintainability – Held – Order granting bail in an appeal u/S 14-A(2) can be recalled in a fit case – Application for cancellation of bail u/S 439(2) CrPC by complainant/ aggrieved party

is maintainable before the High Court which passed the order: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 439(2) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) – Principle of Estoppel – Held – Since accused takes benefit of bail u/S 439 before Trial Court/Special Court and on its refusal, resort to appeal then after getting bail, he is stopped from submission about non-application of Section 439(2) CrPC: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 439(2) and Wild Life (Protection) Act (53 of 1972), Sections 35(8), 2(16), 9, 39, 44, 49, 50(c) & 51 – 23 accused persons – Principles of parity – Non-applicant is kingpin of crime syndicate, involved in trading of wild life contrabands and having international contacts – Released on bail by ASJ on the ground that case is triable by the Magistrate and that other accused persons have also been released on bail – Held – Although offences are registered against the non-applicant and remaining accused persons under the same penal Sections of the 1972 Act, but the magnitude and degree of the role of non-applicant ought to have been assessed by the learned ASJ – Learned ASJ wrongly impressed with the fact that the case is triable by JMFC, losing sight of the fact that the charge levelled against non-applicant is extremely serious in nature – Show cause notice could not be served on the non-applicant as the address given by him at the time of bail was false – So non-applicant fleeing away from justice – Learned ASJ committed grave error in granting bail to non-applicant – Bail granted to the non-applicant cancelled in exercise of power u/S 439(2) of Cr.P.C. as per the dictum of the Apex Court in the case of Abdul Basit Vs. Mohd. Abdul Kadir & anr. Reported in 2014 (10) SCC 754 – Application allowed: *State of M.P. Vs. Jaitmang (@ Pasang) Limi, I.L.R. (2017) M.P. *14*

– Section 439(2) and Witnesses Protection Scheme, 2018 – Cancellation of Bail – Ground – Complainant filed application u/S 439(2) Cr.P.C. seeking cancellation of bail of respondent/accused, however before hearing of application, complainant committed suicide – Held – Record shows that because of harassment at the hands of respondent to compromise the matter, complainant committed suicide – It is a glaring example of threatening the witnesses and non grant of protection of police – Where bail/liberty granted to accused is misused by him, then it is a good ground to cancel the bail – Bail order recalled – Bail cancelled: *In the matter of State of M.P. Vs. Deshraj Singh Jadon, I.L.R. (2019) M.P. *53*

– Section 451 – See – Govansh Vadh Pratishedh Rules (MP), 2012, Rules 5 & 6: *Sarvan Vs. State of M.P., I.L.R. (2016) M.P. 1214*

– Section 451 & 457 – Custody of Seized Article – Perishable Goods – Held – Wheat being perishable item cannot be kept in police station for long period –

It would not be proper to handover the wheat to complainant or petitioner from whom it is seized – Trial Court directed to release the same for its disposal/sale at Krishi Upaj Mandi Samiti under supervision of an officer not below rank of Dy. Collector – Sale proceeds shall not be released until ownership is finally decided by trial Court – Application allowed to such extent: *Sumat Kumar Gupta Vs. State of M.P., I.L.R. (2020) M.P. *20*

– Section 451 & 457 – Custody of Seized Vehicle on *Supurdnama* – Vehicle (Swift Car) was seized in relation to an offence u/s 34 of Excise Act – Registered owner of vehicle filed application for release of the vehicle on *supurdnama* – Collector imposed condition to furnish a bank guarantee of Rs. 5,00,000 – Held – Condition imposed is too harsh, ends of justice would be served if such stringent and onerous condition is dispensed with – Applicant directed to furnish local surety of Rs. 5,00,000 and a bond of the same amount – Application allowed: *Roseline Singh (Mrs.) Vs. State of M.P., I.L.R. (2017) M.P. *39*

– Section 451 & 457 – Release of Seized Rifle and License – Rifle alongwith license seized in connection with a crime – Held – Applicant is owner of licensed rifle – View of trial Court is based on surmise that weapon may be used in another offence, such reasoning is not justified and falls outside the purport of Section 451 Cr.P.C. – Further, there is every possibility that Rifle in lack of proper maintenance would ultimately decay, and there is possibility of it being replaced resulting into loss of applicant – Owner of article should not be made to suffer – Rifle alongwith license directed to be released on Supurdnama – Revision allowed: *Sheru Singh Vs. State of M.P., I.L.R. (2018) M.P. *87*

– Section 451 & 457 and Excise Act, M.P. (2 of 1915), Section 47-D – Interim Custody of Seized Vehicle – Bar of Jurisdiction – Relevant date of Consideration – Held – Relevant date of exercising jurisdiction u/S 451 & 457 Cr.P.C. with regard to disposal of seized property under the Act of 1915 is the date of hearing of application or passing the order on the same and not the date of filing of application – As per Section 47-D of the Act of 1915, Court having jurisdiction to try offence u/S 34 of the Act of 1915 shall not make any order about disposal, custody etc. of seized vehicle after it has received information of initiation of confiscation proceedings from Collector – Provisions of Section 47-D has an overriding effect over the general provisions of Section 451 & 457 Cr.P.C. – Trial Court rightly dismissed the application for releasing the vehicle on the ground of lack of jurisdiction because while deciding application Magistrate had the information of confiscation proceedings – Application dismissed: *Anil Dhakad Vs. State of M.P., I.L.R. (2018) M.P. 1835*

– Section 451 & 457 and Forest Act (16 of 1927), Section 52 – Custody of Vehicle on Supurdnama – Confiscation Proceeding – Jurisdiction of Magistrate –

Held – Considering the fact that there is specific provision u/S 52 of the Act of 1927 which provides for confiscation proceedings and remedies against such order, it is clear that once an intimation of initiation of confiscation proceedings is given to the Magistrate, he looses it's jurisdiction to release the vehicle on *Supurdgi* – In the instant case, confiscation proceedings had begun and hence Magistrate had no jurisdiction to release the vehicle on *Supurdgi* – Revisional Court rightly set aside the order of Magistrate – Application dismissed: *Jakir Khan Vs. State of M.P., I.L.R. (2017) M.P. 1747*

– Section 451 & 457 and Minor Mineral Rules, M.P., 1996, Rule 53 & 57 – Release of Seized Vehicle – Jurisdiction of Court – Held – Even after temporary release of vehicle to applicant u/S 451 Cr.P.C., competent authority under Rules of 1996 would be competent to pass orders under Rule 53 – Ouster of jurisdiction of criminal Court would only occur if proceedings of forfeiture is completed under Rule 53 after which only an appeal will lie under Rule 57: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Section 451 & 457, Penal Code (45 of 1860), Section 379, Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 21 and Minor Mineral Rules, M.P., 1996, Rule 53 – Release of Seized Vehicle – Supurdnama – Jurisdiction of Court – Held – Although there is no provision for temporary release of vehicle to registered owner under Act of 1957 or Rules of 1996, the Act/Rules nowhere bars or put an embargo on jurisdiction of trial Court to entertain application u/S 451 Cr.P.C. – Vehicle seized by police, Magistrate has jurisdiction to release vehicle u/S 451 Cr.P.C. – Impugned orders quashed, trial Court directed to decide application in accordance with law and if meanwhile order under Rule 53 is passed by competent authority, CJM will not have jurisdiction to decide the application – Application allowed: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Sections 451, 457 & 482 – Release of tractor – When a subject matter of an offence is seized by the police, it ought not to be retained in custody of the Court or of the police for any time longer than what is absolutely necessary – The seizure of the property by the police amounts to clear entrustment of the property to a government servant – The idea is that the property should be restored to the original owner after the necessity to retain it ceases – Vehicle directed to be released on Supurdagi on some conditions – Application allowed: *Jaipal Singh Vs. State of M.P., I.L.R. (2016) M.P. *28*

– Section 451 & 482 and Forest Act (16 of 1927), Sections 52 & 52-A, (as amended by Act No. 25 of 1983), 52(3), 52(4)(a) & 52-C – Confiscation Proceedings & Interim Custody of Seized Vehicle – Jurisdiction – Held – Vide amendment, specific provisions have been made for seizure and confiscation of property used in the offence

under the Forest Act – Authorized Officer has power to pass an order of interim custody of seized vehicle and not the Magistrate – Once the authorized Officer initiated confiscation proceedings, jurisdiction u/S 451 Cr.P.C. is not available to Magistrate – Direction of High Court to release the seized vehicle is contrary to law and is hereby set aside – Appeal allowed: *State of M.P. Vs. Uday Singh, I.L.R. (2020) M.P. 16 (SC)*

– Section 457 and Excise Act, M.P. (2 of 1915), Sections 34(1)(a), 34(2), 47-A(3) & 47-D – Release of Seized Vehicle on Temporary Custody – Confiscation Proceedings – Held – Application for interim custody filed by registered owner dismissed on 15.01.18 on the ground that confiscation proceedings are under way – No intimation of confiscation proceedings received by Magistrate till 15.01.18 and same was received on 31.01.18 – Magistrate had jurisdiction to release the vehicle – Vehicle released with directions – Application allowed: *Prakash Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 2782*

– Section 457 and Excise Act, M.P. (2 of 1915), Section 47-A & 47-D – Release of Seized Vehicle on Supurdnama – Car seized for illegal transportation of liquor – Held – Confiscation proceedings commenced prior to filing of application u/S 457 Cr.P.C. – Notice of confiscation sent by Collector to trial Court – Application for custody of vehicle u/S 457 Cr.P.C. is not maintainable where confiscation proceedings u/S 47-A of the Act of 1915 is pending which itself provides a complete mechanism for obtaining seized vehicle on supurdnama – Section 47-D of the Act of 1915 bars the jurisdiction of Court under such circumstances – Application dismissed: *Gangaram Patel Vs. State of M.P., I.L.R. (2019) M.P. *23*

– Section 468 – See – Criminal Practice: *Ramesh Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *109*

– Section 468 – See – Protection of Women from Domestic Violence Act, 2005, Section 12: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Section 468 and Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 4 & 5 – Complaint Case – Limitation – Held – In absence of a precise date on which the complainant is stated to have come to know about commission of offence for the first time which is readily and unambiguously reflected from record of the case, the same would be a matter of evidence and cannot be assessed by this Court in revision proceedings or even u/S 482 Cr.P.C. through a roving enquiry – At this stage, complaint cannot be said to be barred by limitation u/S 468 Cr.P.C: *Sahara India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1497*

– Section 468 and Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Section 468 of Cr.P.C. provides for period of limitation for taking cognizance in criminal case – It does not apply on complaint filed u/S 12 of Protection of Women From Domestic Violence Act, 2005 – As it was a continuing offence, therefore, no limitation can bar filing of the application, and therefore, provisions of Section 468 of Cr.P.C. do not apply – Relationship as husband and wife continued between the parties and when such relationship continued, allegation of domestic violence also continued by anology as a continuing offence: *Hemraj Vs. Smt. Chanchal, I.L.R. (2016) M.P. *25*

– Section 468 & 469(1)(b) and Penal Code (45 of 1860), Sections 212, 217 & 221 – Limitation for Criminal Proceedings – Bhopal Gas Tragedy 1984 – Held – Period of limitation u/S 468(1)(c) is three years – Date of knowledge of offence as claimed, to be of 2010 when judgment was pronounced whereas criminal case was instituted in 1987 – Complainant himself was an intervenor in a related case of 1996 – Respondent, very well aware and had knowledge of crime prior to judgment – Not entitled for benefit u/S 469(1)(b) Cr.P.C. – Complaint is barred by limitation – Further held – Complainant has not led primary evidence nor obtained sanction for prosecution – They failed to show criminal intention of petitioners to harbour the accused and mens rea to screen the offender from legal punishment – No case made out – Proceedings quashed – Petition allowed: *Swaraj Puri Vs. Abdul Jabbar, I.L.R. (2018) M.P. 2061*

– Section 468 & 472 – See – Protection of Women from Domestic Violence Act, 2005, Sections 12, 18 & 31: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

– Section 468 & 473, Forest Act (16 of 1927), Sections 41, 42 & 76 and Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 5 & 16 – Limitation – Delay in taking Cognizance – Offence was registered against the petitioner in the year 2002 and challan was filed in the year 2007, after five years – Trial Court took cognizance of the matter and registered the case on 10.08.2007 itself and thereafter issued notice to petitioner to decide the application u/S 473 Cr.P.C. for condonation of delay – Challenge to – Held – Limitation provided u/S 468(2)(c) is three years – Court shall without taking cognizance of the offence, must first of all issue notice to the prospective accused and hear him on the issue of condoning the delay in taking cognizance, otherwise it would be a violation of natural justice – Court taking cognizance of the offence before condoning the delay fell foul of the mandate of Section 468 Cr.P.C. – Further held – In the instant case, presently 15 years has lapsed and now interest of justice would not be served if petitioner is sent back to stand trial – Proceedings pending before the JMFC stands quashed – Petition allowed: *Vinay Sapre Vs. State of M.P., I.L.R. (2018) M.P. 815*

– Section 468 & 482 – See – Prevention of Corruption Act, 1988, Section 13(1) & 13(2): *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *38 (DB)*

– Section 475, Army Act, (45 of 1950), Section 125, Army Rules, 1954 and Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules, 1978 – Transfer of Proceedings – Altercation between Police Officers and Army Personnel – FIR was lodged by police officers against 60-70 Army Personnel – Matter was also reported to Military Police whereby they started investigation and Army also initiated Court of Enquiry – Station Commander filed an application u/S 475 Cr.P.C. seeking transfer of entire proceedings to Army Station Commander enabling them to proceed under the provisions of Army Act but the same was dismissed on the ground that charge sheet was not filed – Challenge to – Held – 60-70 Army Personnel are involved in the matter and they shall be forced to attend criminal Court every month, which the nation cannot afford, especially keeping in view the present situation – Matter is pending before two different forums in respect of same incident – Statutory provisions of law permits transfer of criminal proceedings to Competent Army Authority in such a situation – Impugned order quashed – State directed to transfer the complete record to petitioner authority – Petition allowed: *Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P., I.L.R. (2017) M.P. 1275*

– Section 475, Army Act, (45 of 1950), Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 – Trial of an accused liable to be tried by Court-martial or by a Competent Criminal Court – When the accused is an army man – The criminal Court before proceeding should give notice to the Commanding Officer of accused as envisaged u/S 125 & 126 of the Army Act: *Karamjeet Singh Vs. State of M.P., I.L.R. (2017) M.P. 946*

SYNOPSIS : Section 482

1. Alternate Remedy

– Section 482 – Inherent powers – Availability of alternative remedy – Held – Only on the ground of non-availing of remedy provided for filing criminal revision

would not create obstruction in the way of filing petition under section 482: *Kuldeep Shrivastava Vs. Ramesh Chandra, I.L.R. (2016) M.P. 587*

– Section 482 – Petition seeking direction to register FIR under inherent powers – Held – Cr.P.C. provides a complete and efficacious remedy u/S 156(3) and 200 – The court declined to direct registration of FIR under inherent powers, since the petitioner has alternative remedy under the code: *Narottam Pathak Vs. State of M.P., I.L.R. (2017) M.P. 762*

– Section 482 and Civil Procedure Code (5 of 1908), Order 39 Rule 2A – Exercise of Inherent Powers u/S 482 in Civil Matters – Application seeking quashment of contempt proceedings initiated against applicant/defendant on an application filed by plaintiff/respondent under Order 39 Rule 2 in a civil suit – Held – Provisions of Section 482 Cr.P.C. is only applicable in criminal proceedings pending under the provisions of Cr.P.C. – Applicants have alternative remedy under civil law – Application u/S 482 not maintainable and is hereby dismissed: *Savitri Bai (Smt.) (Correct Name Smt. Savita Chajju Ram) Vs. Tapan Kumar Choudhary, I.L.R. (2018) M.P. *77*

2. Compromise/Compounding

– Section 482 – Whether proceeding registered under the SC/ST (Prevention of Atrocities) Act can be quashed on the ground of compromise – Held – The SC/ST (Prevention of Atrocities) Act, 1989 is a special statute and therefore, the power to quash proceedings on the basis of compromise cannot be exercised – While deciding the application for compromise u/S 482, the nature and gravity of the offences are required to be considered – If the offence is against the society at large, proceedings cannot be quashed on the basis of compromise: *Monu @ Ranu Kushwaha Vs. State of M.P., I.L.R. (2017) M.P. 489*

– Section 482 and Penal Code (45 of 1860), Section 376 – Quashment of compromise – In a case of rape or attempt to rape, compromise under no circumstances can be really thought of, since there are crimes against the body of the woman which is her own temple – These are the offences which suffocate the breath of life and sully the reputation – There cannot be compromise or settlement as it would be against her honour which matters the most – It is sacrosanct – Sometimes solace is given that the perpetrator of the crime has entered into wedlock which is nothing but putting pressure in an adroit manner – Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility – Application dismissed: *Pankaj Tiwari Vs. State of M.P., I.L.R. (2016) M.P. 1583*

– Section 482, Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11/13 and Penal Code (45 of 1860), Section 392 – A case of day light highway robbery sends ripples of shock disturbing the peace and tranquility of

the area concerned and therefore does not remain in the domain of an offence against an individual but assumes menacing overtones affecting the entire society – If the offence committed against the society the same cannot be compounded even though the parties have come to term with each other – Petition dismissed: *Ashish @ Bittu Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2114*

– Section 482 & 320 – Exercise of inherent powers u/S 482 of Cr.P.C. for compounding of non-compoundable offences punishable under Special Act – If offence is petty, not grievous in nature, against an individual, not causing adverse social impact on society, not tends to defeat the purpose of Special Act – Also to consider circumstances leading to commission of crime, act of accused, manner in which crime committed, previous conduct, antecedents of accused and impact of crime on victim and his family etc: *Sagar Namdeo Vs. State of M.P. , I.L.R. (2016) M.P. 3415*

– Section 482 & 320, Penal Code (45 of 1860), Sections 354 & 354-D and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3 (1-11) – Permission for compounding of offence – Investigation report reveals that accused has been continuously pressurizing & threatening the complainant and her family for marriage – Marriage of complainant could not be fixed – In view of conduct of accused and all facts & circumstances, permission to compound the offences cannot be given: *Sagar Namdeo Vs. State of M.P., I.L.R. (2016) M.P. 3415*

– Section 482 & 320 and Penal Code (45 of 1860), Sections 498-A & 324 – Inherent powers of High Court – Exercise of – Offences u/s 498-A and 324 IPC made non compoundable – High Court u/s 482 has jurisdiction to quash the FIR and criminal case: *Balendra Shekhar Mishra Vs. State of M.P., I.L.R. (2016) M.P. 583*

3. Disputed Question of Fact

– Section 482 – Disputed Question of Fact – Held – Whether applicant was on visiting terms with parents-in-law of respondent No. 2/complainant, is a disputed question of fact which cannot be decided in exercise of powers u/S 482 Cr.P.C. – Investigation is still going on – Legitimate prosecution should not be stifled at such an early stage while exercising powers u/S 482 Cr.P.C. – Defence raised by applicant cannot be considered at this stage: *Dalveer Singh Vs. State of M.P., I.L.R. (2018) M.P. *62*

– Section 482 – Inherent Powers – Facts – False implication by non-applicant No. 2 after filing of complaint & petition u/S 12 of Domestic Violence Act, 2005 by the applicant – Question of facts – Maintainability u/S 482 – Held – All contentions raised by the applicants are question of facts which has to be decided after recording of evidence – It is settled law that truthfulness of documents can not be evaluated at this stage in proceedings u/S 482 of Cr.P.C. – Inherent powers u/s. 482 of Cr.P.C.

should be exercised with great care and caution: *Muin Sheik Vs. State of M.P., I.L.R. (2017) M.P. *54*

– Section 482 and Essential Commodities Act (10 of 1955), Section 11 – Mishandling of Sample – Held – Issue of mishandling of samples by authorities is a matter of evidence which cannot be looked into at this stage: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

– Section 482 and Penal Code (45 of 1860), Section 379 – Theft – Quashment of proceedings – Accused/ petitioner prayed that the borrower non-applicant failed to make the payment of instalments of loan – The financier is entitled to take possession of financed vehicle as per the terms of the contract and filing of the complaint against accused was bad in law – Held – At this stage it would be difficult to come to conclusion, whether the recovery by the financial institution was proper and was in accordance with law – Without scrutiny of evidence to stifle the proceedings at this stage would be improper – The trial Court would be able to adjudicate the matter only after adducing proper evidence and hence petition for quashing criminal proceeding is dismissed: *Arpit Jain Vs. Vijay Sisodiya, I.L.R. (2016) M.P. 919*

4. Frivolous Complaint

– Section 482 and Penal Code (45 of 1860), Sections 354, 452 & 506 – Frivolous Complaint – Duty of Investigating Officer – Held – Harassment of public servant on pretext of false complaint at the instance of those who were restrained by public servant for committing illegal and unauthorized act, is anathema to rule of law – It is duty of the Investigating officer to investigate thoroughly and reach to motive of such complaint and not in a routine manner – Order of Court summoning the accused must reflect application of mind: *Somdatt Mishra Vs. State of M.P., I.L.R. (2019) M.P. 477*

5. Quashment of Complaint/FIR/Charge-Sheet/Trial

– Section 482 – Inherent power – Quashment of complaint – Complaint filed by divorced wife against husband for misappropriation of "Stridhan" – Whether any property gifted during marriage is still in possession of husband and he is not returning the same while having no right, is a matter of evidence – Application has no force – Dismissed: *Sadhna Kothari (Smt.) Vs. Shri Abhay Kumar Dalal, I.L.R. (2016) M.P. 262*

– Section 482 – Inherent powers – Quashing of the complaint registered u/S 420, 467, 468 & 471 r/w Section 120(B) of the IPC – For prosecuting a person u/S 463 & 464 of the IPC it is not sufficient that the text of the document is false but it is to be established that the accused has made a false document as per the condition

given in Section 464 of the IPC and purpose of making such a false document should fall within the purview of Section 463 – If someone induces the concerned officer to issue a particular certificate and the text of the certificate is not correct but if the certificate is issued by the competent authority, it cannot be said that the person either made false document or involved in the conspiracy of making a false documents – Certificate issued by the Sub-Divisional Officer who is competent authority to issue the same then no offence u/S 464 and 463 of the IPC is made out – Criminal proceedings quashed – Petitions allowed: *Harvir Singh Vs. State of M.P., I.L.R. (2017) M.P. 723*

– Section 482 – Inherent Powers/Quashing of FIR – Held – FIR clearly makes out a case of misappropriation of public goods entrusted to the petitioner in his capacity as Manager of Cooperative Society along with the salesman – No case made out for quashing FIR under inherent powers – Petition dismissed: *Jagdish Korku Vs. State of M.P., I.L.R. (2016) M.P. 2418*

– Section 482 – Applicants purchased the property through registered sale deed from title holder – No sale deed in favour of Respondent No. 1 – Mere breach of oral agreement by title holder does not amount to cheating, and intention of the purchaser was never dishonest – Allegations made in the complaint do not constitute an offence – Dispute is purely of civil nature – Criminal proceedings amount to abuse of the process of law – Complaint and FIR quashed: *Vishnu Shastri Vs. Deepak Suryavanshi, I.L.R. (2016) M.P. 3158*

– Section 482 – Quashing of FIR – Applicant obtained a degree of Ayurvedic Vigyanacharya with modern medicine and surgery (A.V.M.S.) – During the inspection of the clinic of the applicant it was found that he was also prescribing allopathic medicines unauthorisedly – Held – Since in the notification filed and relied by the applicant there is no mention about the degree of A.V.M.S. – The State Government has not authorised persons who have obtained the degree of A.V.M.S. to prescribe allopathic medicines – Therefore, the applicant is not authorised to prescribe allopathic medicines – Application dismissed: *Prakash Narayan Shukla (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *24*

– Section 482 – Quashing of FIR – Territorial jurisdiction – Second round of petition – Earlier, the objection raised by the applicant with respect to the territorial jurisdiction was held improper and application u/S 482 Cr.P.C. was dismissed – Against that order SLP was preferred which was also dismissed – Held – Liberty extended by the Hon'ble Apex Court is to enable the present applicant to attempt establishing this objection of territorial jurisdiction by leading evidence during trial before the court below otherwise the issue of the territorial jurisdiction would not be available – It appears that the applicant in order to further cause delay in conclusion of the trial,

has moved fresh application on the same ground – Application dismissed: *Yogesh Kumar Kushwaha Vs. State of M.P., I.L.R. (2017) M.P. 484*

– Section 482 – Powers of High Court – Held – Apex Court has concluded that High Court powers to quash criminal proceedings should be exercised sparingly and in rarest of rare cases – Reliability of allegations made in FIR or complaint not be examined: *Nandlal Gupta Vs. Union of India, I.L.R. (2019) M.P. 700 (DB)*

– Section 482 – Prosecution for defamation on FIR – Proceedings and FIR quashed: *Pramod Kumar Vs. State of M.P., I.L.R. (2016) M.P. 2129*

– Section 482 – Quashing of FIR – Appreciation of Evidence – Appreciation in a summary manner of averments made in the FIR is not permissible at the stage of quashment of criminal proceeding – Facts will have to be proved only in the course of regular trial: *Meena Sharma (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2385*

– Section 482 – Quashing of trial u/S 482 – Offences punishable under Special Act not precluded: *Sagar Namdeo Vs. State of M.P., I.L.R. (2016) M.P. 3415*

– Section 482 – Quashment of Cognizance of complaint u/S 138 & 142 of Negotiable Instruments Act – There is no material on record to establish that the petitioner was employer/officer of the company and has committed any act or omission or was responsible for conduct of the business of Company – Petitioner cannot be held liable – Cognizance taken against him quashed: *M.S. Dahiya Vs. State of M.P., I.L.R. (2016) M.P. 1824*

– Section 482 – Quashment of FIR & Criminal Proceedings – Inherent Powers of Court – Discussed and explained with case laws: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 482 – Quashment of FIR and Criminal Proceedings – Scope and Jurisdiction – Stage of Trial – Held – High Court can certainly exercise powers u/S 482 Cr.P.C. after filing of the charge sheet or even framing of charge: *Navneet Jain (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2560*

– Section 482 – Quashment of FIR – Facts involved – FIR was registered against applicants u/S 379 of I.P.C. – Applicants were in possession of the land in question, which fact is corroborated by the report of Revenue Inspector – Acknowledgement by revenue authorities of proceeds deposited by the applicant no.1 is on record – Non-applicant no. 2 also filed suit where his possession was not prima-facie found proved – Held – It is a fit case for quashing the FIR: *Dina Vs. State of M.P., I.L.R. (2016) M.P. 3206*

– Section 482 – Quashment of FIR – Grounds – Held – U/S 482 Cr.P.C., Court cannot take into consideration external materials given by accused for arriving to a conclusion that no offence was disclosed or there was possibility of acquittal: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Section 482 – Quashment of FIR – Scope & Jurisdiction – Held – Allegations made in FIR and other material collected during investigation are to be appreciated on their face value to determine whether an offence is made out as alleged in FIR – Scope and jurisdiction of this Court in matters of quashment of FIR and consequent criminal proceedings is limited: *Jaiprakash Vaishnav Vs. State of M.P., I.L.R. (2018) M.P. 3001*

– Section 482 – Quashment of FIR – Scope and Jurisdiction – Held – High Court in its jurisdiction u/S 482 Cr.P.C. is not called upon to embark upon the inquiry whether allegations in FIR and the charge sheet are reliable or not and thereupon to render a definite finding about truthfulness or veracity of the same – Matter can be examined only by Court through evidence: *Atul Dubey Vs. State of M.P., I.L.R. (2018) M.P. 2568*

– Section 482 – Scope – Quashment of FIR – Offence registered u/S 7 of Prevention of Corruption Act, 1988 – Held – In the instant case, after investigation, challan has been filed and charges have been framed and accordingly trial Court recorded the evidence of prosecution witnesses – It is well settled principle of law that if allegation made in the FIR are taken at their face value and accepted in their entirety, criminal proceedings instituted on the basis of such FIR should not be quashed – Powers u/S 482 are very wide and very plentitude and requires great caution in its exercise – Criminal prosecution cannot be quashed at such mid-session – It is not that rarest of rare case which calls for exercise of inherent powers – Petition dismissed: *Radheshyam Soni Vs. State of M.P., I.L.R. (2018) M.P. *21 (DB)*

– Section 482 – Quashment of Proceedings – Compromise – Family Dispute – Rival parties members of same family, closely related and ready to settle disputes – Held – It will be futile, vexatious, leading to abuse the process of court, if they are allowed to continue even at the appellate stage – First Information Report quashed: *Hasib Khan Vs. State of M.P., I.L.R. (2016) M.P. 1233*

– Section 482 – Quashment of Proceedings – Compromise – Serious Offence – Nature and gravity of offence, circumstances leading to commission of offence, nature of the injuries sustained, part of body where injury is inflicted, weapon used, evidence of prosecution to establish a prima facie case and willingness of parties to settle their disputes are balancing elements to be taken into account while considering

application for quashing in such cases: *Hasib Khan Vs. State of M.P., I.L.R. (2016) M.P. 1233*

– Section 482 – Quashment – Scope – Held – If Court finds that a case or proceedings has been instituted on malice or criminal machinery has been misused, then it can quash such proceedings and when cognizance is already taken in a matter, same can be quashed u/S 482 Cr.P.C: *Manoj Singhal Vs. Rajendra Singh Bapna, I.L.R. (2019) M.P. 1571*

– Section 482 and Arms Act (54 of 1959), Section 25(1B)(a) – Quashing of proceeding – Speedy Trial – Applicant/accused aged 75 years and facing trial for more than 20 years – He has suffered mental agony and physical discomfort and unnecessarily financial loss – His right to speedy trial has been infringed due to undue and inordinate delay in the trial – Therefore, continuance of such proceeding is an abuse of process of law – Therefore, criminal proceedings quashed and applicant is discharged: *Laxman Vs. State of M.P., I.L.R. (2017) M.P. *6*

– Section 482 and Excise Act, M.P. (2 of 1915), Section 34-A – Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge, inherent powers should be used to quash the proceedings – Held – In view of the fact that no evidence is available against the petitioner except the disclosure of co-accused u/S 27 of Evidence Act, the FIR, so far it relates to the accused, deserves to be quashed: *Pappu Rai Vs. State of M.P., I.L.R. (2016) M.P. 2847*

– Section 482 and Excise Act, M.P. (2 of 1915), Section 34(2), 44 & 61 – Quashment of Criminal Proceedings – Cognizance of Complaint – Court took cognizance against the petitioner for offence u/S 34(2) & 44 of the Act of 1915 – Challenge to – Held – As per Section 61 of the Act of 1915, cognizance can only be taken by Magistrate on a compliant filed by the Collector or Excise officer not below the rank of District Excise officer as may be authorized by the Collector in this behalf – In the present case, complaint was not filed by the said officers – Provisions of Section 61 was not followed – Proceedings pending before the magistrate are quashed – Application allowed: *Dinesh Vs. State of M.P., I.L.R. (2017) M.P. 1544*

– Section 482 and Factories Act (63 of 1948), Section 9 & 92 – On a complaint filed by the Factory Inspector, cognizance taken by Court and criminal case was registered against petitioners, who are the owner and manager of the company – Challenge to, on the ground that Factory Inspector was not accompanied by any other person/expert during inspection as contemplated in Section 9 of the Act of 1948 – Held – In the instant case, Inspector did not inspect the factory after any accident so as to require an expert to accompany but the inspection was made in a routine

manner – Section 9 gives power to Inspector to either himself inspect the factory alone or along with assistance of any government or local or other public authority or with an expert as he thinks fit – Inspector pointed out certain violation of the Factory Act so it cannot be said that prima facie no offence is made out – No ground established to quash the proceedings – Petition dismissed: *Indu Batni (Mrs.) Vs. State of M.P., I.L.R. (2017) M.P. *79*

– Section 482 and Penal Code (45 of 1860), Section 304-A – Criminal Proceedings are maintainable only if there is *prima facie* gross negligence, as opined by the independent doctor (preferably Government Doctor) – In present case there is a categoric report submitted by the Dean, Mahatma Gandhi Medical College, which is government hospital that the anaesthesia administered to the child was administered keeping in view the weight of the child – Therefore, the Anaesthetist is certainly not at all guilty of gross negligence – Therefore, charge-sheet filed by the State for offence u/S 304-A quashed: *Lalit Kavdia (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 2107*

– Section 482 and Penal Code (45 of 1860), Section 306 – Abetment of suicide – Quashing of FIR – Offence u/S 306 of the IPC – There is no straight jacket formula to pin point the fact and circumstances which fall within and without the definition of abetment – On receiving the news of the accused resiling from the proposal of marriage the deceased may have gone into the state of shock and compelling her to take the extreme step of ending her life by committing suicide – Whether the offence u/S 306 of the IPC is made out or not, cannot be decided at the preliminary stage when investigation is said to be inconclusive: *Harnam Singh Vs. State of M.P., I.L.R. (2016) M.P. 2874*

– Section 482 and Penal Code (45 of 1860), Section 306 & 498-A – Quashment of FIR – Held – Applicant has been implicated only because he happens to be the distant relative of husband of the deceased – Applicant is resident of District Morena whereas, according to the prosecution witnesses, deceased was residing separately along with her husband and children in Gwalior – No allegation that deceased was residing jointly with the accused/applicant – Witnesses had not clarified that on what date and at which place and in what manner, the accused/applicant harassed the deceased – Merely bald allegations were made against the relative of the husband without there being any specific overt act on their part and sending those persons to ordeal of trial will not be proper – FIR and consequential proceedings with regard to applicant are quashed – Petition allowed: *Mahendra Singh Vs. State of M.P., I.L.R. (2017) M.P. *80*

– Section 482 and Penal Code (45 of 1860), Sections 420, 465, 468, 470 r/w Section 120-B – Quashment of FIR – Gambling activities through Online Games – Held – Applicant/company designed fun games by name of Casino and Teen Patti –

Video parlours are being run as Casinos – It is all gambling in which skill is not involved – Gambling is absolutely prohibited in M.P. – Enough material is available in case diary that points earned by players are being converted into money by applicant – Through bank account details, prosecution trying to establish that money is transferred to company/accused persons in regular manner by franchisee/video parlours – It is a matter of evidence which can be proved by prosecution by way of evidence – No case for interference – Application dismissed: *Achal Ramesh Chaurasia Vs. State of M.P., I.L.R. (2018) M.P. 2287*

– Section 482 and Penal Code (45 of 1860), Section 341 & 384 – Quashment of Proceeding – Offence registered against petitioner, a police constable on an allegation that while on duty, he stopped two dumpers carrying/transporting sand illegally and asked for money showing fear of arrest and seizure of vehicle – Held – As per provisions of Section 341, it is clear that if any person or officer with a view to prevent crime or chase criminal, restrains or stopped him from going ahead, such act does not come within purview of Section 341 IPC – Similarly, saying or threatening of any person who is involved in crime concerned that if he is not paid money, he will be arrested or property will be seized by a public servant like police constable, it cannot be said that he caused fear to complainant to cause injury and dishonestly induced the person to deliver any money and therefore such act of the petitioner does not come within the purview of Extortion – There is no ingredient in FIR or outcome of investigation, to prosecute petitioner for offence u/S 341 and 384 IPC – Proceedings quashed – Petition allowed: *Bhupendra Singh Yadav Vs. State of M.P., I.L.R. (2017) M.P. 1788*

– Section 482 and Penal Code (45 of 1860), Section 384 – Quashing of complaint – To constitute an offence of extortion, the prosecution must prove that on account of being put into fear of injury, the victim delivers any particular property or valuable security to man putting him to fear – If there was no delivery of property or valuable security, then the important ingredient of an offence of extortion stands excluded – Mere threat or fear of injury, which has not led to creation of valuable security, cannot constitute offence of extortion: *Deepti Gupta (Smt.) Vs. Smt. Shweta Parmar, I.L.R. (2016) M.P. 2869*

– Section 482 and Penal Code (45 of 1860), Sections 406, 420, 467, 468, 471 & 120 – Quashment of complaint – Applicants having possession & title over the property, they entered into agreement for sale – No ingredients of Sections 467, 468, 469 & 420 of IPC are made out – Criminal proceedings just to pressurize the seller/applicants – Civil dispute converted into criminal case and power under Section 156(3) exercised in mechanical manner – Criminal proceedings deserves to be quashed: *Amrendra Kumar Vs. State of M.P., I.L.R. (2016) M.P. *10*

– **Section 482** and Penal Code (45 of 1860), Sections 419 & 420 – Quashment – Where *prima facie* evidence is available in the case diary against the accused in respect of the alleged offence, the FIR or any other proceeding or the charge sheet could not be quashed – Petition dismissed: *Balasaheb Bhopkar Vs. State of M.P., I.L.R. (2016) M.P. 1610 (DB)*

– **Section 482** and Penal Code (45 of 1860), Sections 420, 467, 468, 471, 474 & 120-B – Complaint filed against the applicants, who had purchased the land through registered sale deed – Complainant/Respondent No. 1 claiming himself to be in possession of the property on the basis of pending suit for specific performance of contract filed on the basis of oral agreement – Trial Court ordered for police report – Instead of the police report, FIR submitted by police authorities, which was lodged on the advice of Advocate General – Held – Mere pendency of a suit for specific performance of contract does not make a person to be the title holder of the property – Complaint itself was vague and filed to place pressure on bonafide purchasers – Police authorities lodged FIR without following prescribed procedure: *Vishnu Shastri Vs. Deepak Suryavanshi, I.L.R. (2016) M.P. 3158*

– **Section 482** and Penal Code (45 of 1860), Section 498-A/34 – Quashment of FIR and Criminal Proceedings – Husband after a month of marriage shifted to Gaziabad with his wife – Allegation of cruelty relating to dowry demands by husband, mother-in-law and sister-in-law – Held – Mother-in-law and sister-in-law did not live with the couple at Gaziabad – Their separate roles have also not been mentioned in FIR or in statements u/S 161 Cr.P.C. – No elementary particulars regarding torture like date, time and place mentioned anywhere – Omnibus allegations – FIR and criminal proceedings against mother-in-law and sister-in-law is quashed – Trial against husband will continue – Application partly allowed: *Navneet Jain (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2560*

– **Section 482** and Penal Code (45 of 1860), Sections 498-A, 323 & 506/34 – Quashing of the FIR – Petitioners are the relatives of the husband of the complainant – All of them living separately and have been arrayed as accused on the basis of omnibus allegation – Prior to the registration of the FIR the husband of the complainant submitted a written complaint in which he has already expressed his apprehension about the conduct of his wife – Supreme Court, time and again, has deprecated this practice of implicating the family members of the husband in FIR as co-accused in the matrimonial disputes – Held – In absence of any specific allegation the FIR registered against the petitioners liable to be quashed: *Saurabh Tripathi Vs. State of M.P., I.L.R. (2017) M.P. 1000*

– **Section 482** and Penal Code (45 of 1860), Sections 498-A, 323, 506 r/w Section 34 – Quashing of FIR – When allegations are made in the FIR and in the

police statement of witnesses against the relative of the husband for demand of dowry and harassment, quashing of FIR is not warranted: *Meena Sharma (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2385*

– Section 482, Essential Commodities Act (10 of 1955), Section 3/7 and Kerosene (Restriction on use and Fixation of Ceiling Price) Order, 1993, Sub-clause 3(2) – Quashing of FIR – No evidence available on record which may show that the petitioner was in any way connected with the tanker found stationed in his premises though truck was stationed without his sanction and authority and at the instance of owner of the tanker containing kerosene for whose benefit, the kerosene was transported – It cannot be said that the petitioner is guilty of any crime – FIR liable to be quashed and the petitioner is discharged – Application allowed: *Rasmeet Singh Malhotra Vs. State of M.P., I.L.R. (2016) M.P. 329*

– Section 482, Legal Metrology Act, 2009 (1 of 2010), Sections 48(5) & 51 and Essential Commodities Act (10 of 1955), Section 3/7 – Quashing of First Information Report – Second FIR u/S 3/7 of the Essential Commodities Act – Prior to the registration of First Information Report under the Essential Commodities Act, the offence under Legal Metrology Act was compounded – Later on offence registered under the Essential Commodities Act – If the officer of the Legal Metrology Act would have filed the criminal complaint against the applicant then still when they were not competent to proceed under the Essential Commodities Act, the food officer was entitled to prosecute the second complaint against the applicant under the Essential Commodities Act: *Balchand Gupta Vs. State of M.P., I.L.R. (2017) M.P. 184*

– Section 482, Penal Code (45 of 1860), Sections 120(B), 419, 420, 467, 468 & 471 and Prevention of Corruption Act (49 of 1988), Section 13(2) r/w 13(1)(d) – CBI filed charge sheet against applicant (accused) – Applicant is a practicing lawyer and panel advocate for conducting search and preparation of search report – Report was found false – There was a gross negligence on the part of the applicant, but it cannot be said that he was criminally associated with the co-accused or with the bank officials and participated in the criminal conspiracy – It is not only on the basis of his report the property was hypothecated and loan was sanctioned – Criminal proceedings against the applicant are quashed: *Yash Vidyarthi Vs. Central Bureau of Investigation, New Delhi, I.L.R. (2016) M.P. *17*

– Section 482, Penal Code (45 of 1860), Sections 323, 355, 294, 190 & 506 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(r), 3(1)(s) & 3(2)(v-a) – Quashment of Proceedings – Grounds – Held – Witnesses present on spot of incident stated that applicant has not abused or threatened complainant instead complainant made efforts to assault him with sickle and also used filthy language – Earlier preliminary inquiry made by police also found

the complaint to be false – Merely on statement of complainant ignoring other cogent and legal evidence which disproves the version of complainant, applicant cannot be prosecuted – Allegations are frivolous, concocted and baseless & made with an oblique motive to settle the score with regard to recovery of wages – Proceedings quashed – Application allowed: *Sushant Purohit Vs. State of M.P., I.L.R. (2019) M.P. 944*

– Section 482, Penal Code (45 of 1860), Sections 354, 452 & 506 and Electricity Act (36 of 2003), Section 135(1) & 138-B – Quashment of FIR, Charge Sheet & Criminal Proceedings – False Complaint Against Public Servant – Held – Applicant, a J.E. in electricity department, in discharge of official duty lodged a case under provisions of Act of 2003 against complainant's husband whereby summons was issued – Subsequently, complainant lodged FIR against applicant u/S 354 IPC – Records reveals that lodging of FIR was an afterthought – Complainant suffered electricity disconnection and thus she made a false complaint to settle score, exert pressure and wreak vengeance – Judicial process cannot be used as instrument of oppression and harassment – Complainant abused the process of law – Documents and event established the frivolousness, mischief, falsehood and vexatious litigation – FIR, Charge Sheet and proceedings quashed – Application allowed: *Somdatt Mishra Vs. State of M.P., I.L.R. (2019) M.P. 477*

– Section 482, Penal Code (45 of 1860), Section 406, Sale of Goods Act (3 of 1930), Sections 31, 45 & 46 and Contract Act (9 of 1872), Section 11 – Agreement by Juvenile – Void Contract – Quashment of FIR – Held – Where seller has delivered the property to buyer and a part of consideration amount has not been paid by the buyer and seller is continuously using the said property, then unpaid seller has lien over the said property and such act of buyer would certainly amount to criminal breach of trust because position of buyer would be that of trustee so long as he does not make the entire consideration amount – Further held – Provisions of Act of 1930 do not prohibit a juvenile to enter into any transaction – Juvenile cannot claim any exemption from the provisions of IPC neither can he say that u/S 11 of Contract Act, such contract is void and he cannot be criminally prosecuted for criminal breach of trust – FIR cannot be quashed – Application dismissed: *Antim Dubey Vs. State of M.P., I.L.R. (2018) M.P. 1588*

– Section 482, Penal Code (45 of 1860), Sections 409, 420, 467, 468, 471, 500 & 120-B r/w 34 and Negotiable Instruments Act (26 of 1881), Section 138 – Quashment of Criminal Complaint Case – Abuse of Process of Court – Applicants are representatives of a company – In relation to some issues regarding payments, company filed a case u/S 138 of the Act of 1881 against respondent no.2 – Subsequently, respondent no.2 filed a complaint case against applicants u/S 409, 420, 467, 468, 471, 500 & 120-B r/w 34 IPC – Challenge to – Held – Looking to the

dictum of Apex Court in (1999) 8 SCC 468, in such circumstances, prima facie no offence is made out under the said provisions of IPC and such subsequent proceedings are abuse of process of Court – Apex Court in (2015) 12 SCC 781 has held that in such circumstances, if the company, who is the real beneficiary is not arrayed as accused, mere representatives/workers cannot be prosecuted for the offence unless they are personally responsible for it – Further held – In the present case, prima facie it appears to be a civil dispute and respondent no.2 had made an effort to resolve the same by implicating petitioners in a criminal case – Proceedings against petitioners is set aside – Petition allowed: *K. Sheshadrivashu Vs. State of M.P., I.L.R. (2018) M.P. 1303*

– Section 482, Penal Code (45 of 1860), Sections 417, 420, 467, 468, 471 & 120-B and Information Technology Act, (21 of 2000), Section 66-D – Quashment of FIR – Online air tickets booking through travel agency – Fraud detected and FIR lodged by travel agency – During investigation name of applicants were also added as accused – Held – Applicants have not been named in FIR and the persons who have been named, entered into compromise with complainant and got the FIR quashed against them – Applicants are bonafide purchaser of air tickets from co-accused, they never played any fraud with complainant – No material placed before Court by State Government or complainant showing involvement of applicants in respect of crime in question – FIR against applicants quashed – Application allowed: *Muyinat Adenike Vs. State of M.P., I.L.R. (2018) M.P. *56*

– Section 482, Penal Code (45 of 1860) – Sections 420, 467, 468, 471 & 120-B and Motoryan Karadhan Adhiniyam, M.P., (25 of 1991), Section 3/16(3) – Quashment of FIR – Charges of creating fabricated/forged documents and plying buses on routes other than the permitted one and causing tax evasion resulting in loss to government – Held – Perusal of record and charge sheet reveals that there is ample prima facie evidence and circumstances available to initiate proceedings against appellants – Offence committed or not is a matter of evidence which can only be decided after recording of evidence by both parties – Application dismissed: *Jai Prakash Sharma Vs. State of M.P., I.L.R. (2019) M.P. 223*

– Section 482, Penal Code (45 of 1860), Sections 452, 323, 294 & 506 r/w Section 34 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(r), 3(1)(s) & 3(2)(va) – Quashment of FIR – Marriage of Complainant Lady – Change of Caste – Held – Full Bench of Bombay High Court has concluded that the woman who is born into a Scheduled Caste or Scheduled Tribe, on marriage with person belonging to forward caste, does not automatically transplanted into the caste of husband by virtue of her marriage and thus cannot be said to belong to her husband's caste – Hence a person born to a caste or tribe shall remain to that caste or tribe till death – Complainant continues to be a member of SC/

ST community – Clear allegations against applicants which can only be examined after leading evidence – Application dismissed: *Atul Dubey Vs. State of M.P., I.L.R. (2018) M.P. 2568*

– Section 482, Penal Code (45 of 1860), Section 498-A/34 and Dowry Prohibition Act (28 of 1961), Section 3/4 – Quashing of FIR – Complainant is wife of brother of petitioner No. 2 and petitioner No. 1 is husband of petitioner No. 2 – Omnibus allegations against them that they have pressurised complainant to provide 35 lakhs to buy a flat for her and her husband in Hyderabad – They have also abused, beaten and harassed the complainant mentally and physically for dowry demand – They have come to Jabalpur for attending the marriage on 13.04.2015 and flew back to Delhi on 20.04.2015 and back to London on 04.05.2015 – There was no further occasion for interaction of the petitioners with the complainant – Held – Since the charge sheet did not disclose any offence against the petitioners – The undesirable and mechanical process of taking cognizance of offences against accused persons mentioned in the charge sheet is unsustainable which has the propensity of reducing the criminal court to a tool of convenience in the hands of unscrupulous complainant who would like to contort the criminal justice process – Proceedings initiated against petitioners quashed: *Rajesh Kumar Gupta Vs. State of M.P., I.L.R. (2017) M.P. 989*

– Section 482, Penal Code (45 of 1860), Section 498-A & 506 r/w Section 34 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Quashment of FIR – On a complaint by wife, offence u/S 498-A & 506 r/w Section 34 IPC and u/S 3/4 of the Act of 1961 was registered against husband, mother-in-law, father-in-law and brother-in-law – Challenge to – Held – Earlier also wife has lodged a report before Mahila Thana Bhopal where averments relating to dowry demands or harassment in relation thereto was not made – No explanation as to why such averment was not made in first report – It is clear that since police did not registered offence on her first report and when the conciliation proceedings failed, she again filed a report concocting events and introducing ingredients of Section 498-A IPC so as to ensure that Court at Bhopal gets territorial Jurisdiction – Proceeding is manifestly initiated with malafide and maliciously instituted with ulterior motive for wreaking vengeance on husband and his family members – Fit case for interference – FIR quashed: *Mohit Jain Vs. State of M.P., I.L.R. (2017) M.P. *97*

– Section 482 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 23, 25 & 28 – Quashing of proceedings – It is not the requirement of code or the Act of 1994 that the Appropriate Authority should personally present the complaint before the competent Magistrate – The District Magistrate who is Appropriate Authority under the Act of 1994 has

made the complaint and on the basis of complaint CJM has rightly taken the cognizance against the applicants/accused – Application dismissed: *Raju Premchandani (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 1578*

– Section 482 and Prevention of Food Adulteration Act (37 of 1954), Sections 7, 13(2), 16(1)(a)(i)/(ii) – Adulteration – Notice u/S 13(2) – Object – Quashment of Proceeding – Complaint case against the petitioner for charges of adulteration in milk – Three samples of milk were seized, one sample sent to State Food Laboratory Bhopal for examination whereby adulteration was found – No notice was served u/S 13(2) of the Act of 1954 to petitioner/accused – Challenge to – Held – According to Section 13(2) of the Act of 1954, if adulteration is found in the seized article, the local (health) authority, should sent a copy of report to accused affording him an opportunity to get the other sample tested/examined by the Central Food Laboratory – Accused was deprived of his valuable right – Provisions of Section 13(2) is mandatory and violation thereof will entitle the accused to acquittal – Proceedings quashed – Petition allowed: *Abha Garg Vs. State of M.P., I.L.R. (2017) M.P. *75*

– Section 482 and Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Quashing of the issuance of notice – Cognizance was challenged on the ground that it ought not to be taken by the Domestic Violence Court without any report of the Protection Officer – Held – Cognizance can be taken in either of the three conditions firstly if the complaint is made by the person aggrieved or the report is filed by the Protection Officer or by any other person aggrieved on behalf of the aggrieved person – There is provision that before passing such an order, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or service provider – This Section does not show that if such a report is not received, the Domestic Violence Court cannot take cognizance – Application dismissed: *Mukesh Singh Vs. Smt. Suni Bai, I.L.R. (2016) M.P. 1598*

– Section 482 and Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Quashment of Proceedings – Report of Protection Officer – Held – No protection order has been passed so far, therefore proceedings cannot be quashed on the ground that report of protection officer has not been considered – Allegations of malafides cannot be considered at this stage, when allegations prima facie makes out a case of Domestic Violence – Application dismissed: *Mukesh Singh Vs. Smt. Rajni Chauhan, I.L.R. (2019) M.P. *31*

– Section 482 & 82 – Proclaimed Absconder – Quashment of FIR – Maintainability of Application – Held – Abscondence of accused does not lead to final conclusion of his guilt or mens rea, therefore even if he is absconding, his application u/S 482 Cr.P.C. is maintainable – However in such case, accused looses principles of equity, fair play and good conscience and his case shall be considered on

strict legal principles and scope of Section 482 Cr.P.C. would be extremely narrow – In present case, allegations are specific and complainant made statement regarding physical and verbal abuse – Investigation is held up for abscondence of applicants – No case of interference made out – Applicants has to plead and proof their part of innocence – Application dismissed: *Chhabiram Tomar Vs. State of M.P., I.L.R. (2019) M.P. 936*

6. Recall of Order

– Section 482 – Recalling of order under inherent powers – Application to recall the order (whereby the petition under Section 482 was dismissed) filed on the ground that the counsel instead of withdrawing petition as instructed, pleaded no instructions – Held – Order cannot be recalled using inherent powers merely on the ground that technically the petition was also dismissed for want of prosecution after making observation on merits and when no prejudice is caused to the applicant – It is not a case in which no opportunity of hearing was extended to the applicant: *Balasaheb Bhopkar Vs. State of M.P., I.L.R. (2016) M.P. 1610 (DB)*

7. Sanction for Prosecution

– Section 482 and Prevention of Corruption Act (49 of 1988), Section 19 – Sanction for prosecution – Proof of consideration of relevant material and application of mind by the Authority– Held – Sanction order itself shows that while passing the order Competent Authority has examined relevant facts, documents and evidence – Thus, there was due application of mind by the Sanctioning Authority – No interference is warranted – Application dismissed: *Rajeev Lochan Sharma Vs. State of M.P. , I.L.R. (2016) M.P. 3396 (DB)*

8. Scope, Power & Jurisdiction

– Section 482 – Circumstances where jurisdiction u/S 482 Cr.P.C. can be invoked, discussed and explained, specifying the guidelines of the Apex Court: *Amita Shrivastava (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2868*

– Section 482 – Inherent Powers – Jurisdiction – Held – High Court can pass appropriate order under Section 482 of Cr.P.C. in cases where there is misuse of process of law: *Jaspal Singh Sodhi Vs. State of M.P., I.L.R. (2016) M.P. 1239*

– Section 482 – Documents of Defence – Scope of Consideration – Held – It is clear that when documents are of sterling and impeccable quality, the same may be considered by High Court while exercising power u/S 482 Cr.P.C.: *A.K. Hade Vs. Shailendra Singh Yadav, I.L.R. (2018) M.P. 1807*

– Section 482 – Forest Offence – Release of Seized Vehicle on Supradnama – Bank Guarantee – In an earlier M.Cr.C., a JCB vehicle seized in connection with forest offence was released by this Court alongwith a condition to furnish a bank Guarantee of Rs. 5 lacs – Present application seeking reduction of Bank Guarantee – Held – Apex Court has concluded that while dealing with offence under the Forest Act, provision should be strictly complied with – Generally the seized forest produce and the vehicle, boat, tools etc used in commission of forest offence should not be released and even if Court is inclined to release the same, authorized officer must assign reasons and must insist on furnishing bank guarantee as minimum condition – Release of such vehicle should not be dealt with liberal approach – Further leniency not called for – Petition dismissed: *Surendra Kumar Tiwari Vs. State of M.P., I.L.R. (2018) M.P. 1826*

– Section 482 – Inherent jurisdiction – For quashing a criminal proceeding or FIR or complaint in exercise of inherent jurisdiction, nature and gravity of offence, effect on society or public at large, stage of settlement and whether continuation of proceeding would tantamount to abuse of process of law is to be taken into consideration – Principles are not exhaustive but elucidative: *Hasib Khan Vs. State of M.P., I.L.R. (2016) M.P. 1233*

– Section 482 – Inherent power – Held – To prevent the abuse of process of the Court and to prevent the harassment to citizen of India by illegal prosecution under Section 376 of IPC, it would be imperative obligation to interfere in the impugned order: *Pukhraj Singh Vs. State of M.P., I.L.R. (2016) M.P. 248*

– Section 482 – Interference – Relevant parameters laid down by Apex Court, enumerated: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Section 482 – Jurisdiction of High Court – Held – The High Court has no jurisdiction to examine the truthfulness of allegations made in FIR and case dairy statements: *Anurag Mathur Vs. State of M.P., I.L.R. (2017) M.P. 2031*

– Section 482 – Jurisdiction of Trial Court – This issue is to be decided by the Trial Court itself on the basis of material on the record – High Court cannot substitute itself for the trial Court to decide the point of jurisdiction: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Section 482 – Petition against order of Subordinate Court dismissed as withdrawn with liberty to raise objections at proper stage – Effect thereof – Whether points can be reagitated afresh before Subordinate Court in the garb of such liberty – Held – No – In the petition filed by applicants against the said order, liberty granted by the High Court was misunderstood – No court can give liberty to agitate the points

afresh before the lowest court all over again which are already considered and decided by the superior Court – Power under Section 482 Cr.P.C. vested in the High Court cannot be delegated by the grant of liberty – Liberty can be granted within the permissible limit of provisions of various laws that are in force for the time being: *Hargovind Bhargava Vs. State of M.P., I.L.R. (2016) M.P. 1843*

– Section 482 – Police Investigation – Scope & Jurisdiction – Held – Court in exercise of powers u/S 482 Cr.P.C. cannot direct the police to investigate the case from a particular point of view and cannot supervise investigation by issuing directions as to in what manner it is to be done, as the investigation is the domain of police – Court can interfere with investigation where investigating officer acted in violation of any statutory provisions of law putting personal liberty of person in jeopardy or investigation is not bonafide or investigation is tainted being baised or malafide – No allegation against any investigating officer – Application dismissed: *Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P., I.L.R. (2017) M.P. 2881*

– Section 482 – Power/jurisdiction/scope – Not restricted only to situation where no remedy provided in law – Also provides remedy for all situations where the continuance of criminal proceedings would result in abuse of process of law – Power of the High Court u/S 482 is plenary in nature limited only by express statutory prohibitions and limitations imposed by Supreme Court by judgments: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Section 482 – Scope & Exercise of Power discussed: *Uma Shankar Vs. State of M.P., I.L.R. (2019) M.P. 2601*

– Section 482 – Scope and Jurisdiction – Held – Exercise of powers u/S 482 Cr.P.C. in this nature of case is exception and not rule – While exercising such powers Court does not function as Court of Appeal or Revision – Inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution: *Jai Prakash Sharma Vs. State of M.P., I.L.R. (2019) M.P. 223*

– Section 482 – Scope and Jurisdiction – Held – In a petition u/S 482 for quashment of FIR, Court has to see whether the allegations made in complaint, if proved, make out a prima facie offence or not – At this stage, sifting or weighing of evidence in petition u/S 482 Cr.P.C. is neither permitted nor expected – Courts have to strictly confined to the scope and ambit of provision: *Achal Ramesh Chaurasia Vs. State of M.P., I.L.R. (2018) M.P. 2287*

– Section 482 – Scope & Jurisdiction – Held – Power u/S 482 cannot be exercised where the allegations are required to be proved in Court of law: *State of M.P. Vs. Yogendra Singh Jadon, I.L.R. (2020) M.P. 1242 (SC)*

– Section 482 – Scope & Jurisdiction – Held – Question as to whether there was a dispute as contemplated under a clause of the said agreement which obviated obligation of purchaser to honour the cheque, furnished in pursuance of the said agreement to the vendor, cannot be the subject matter of a proceeding u/S 482 Cr.P.C. and is a matter to be determined on basis of evidence which may be adduced at the trial: *Ripudaman Singh Vs. Balkrishna, I.L.R. (2019) M.P. 1620 (SC)*

– Section 482 – Section 482 confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused – Petition filed against order taking cognizance held maintainable – Further held – In the present case petitioner being a public servant and the allegations mentioned in the complaint are relating to and arising out of his official duties was protected under Section 197 particularly when it seems that complaint proceeding is instituted with ulterior motive – Order taking cognizance and complaint proceedings set aside: *Akhilesh Kumar Jha Vs. State of M.P., I.L.R. (2016) M.P. 1589*

– Section 482 – Sentence on offender already sentenced for another offence – Appellant already convicted in another trial and appeal was partly allowed by High Court by reducing the sentence – Appellant thereafter convicted in another case and appeal is pending – Whether in the facts of the case the High Court has inherent jurisdiction to invoke provision of Section 427 of Cr.P.C. by way of separate application when provision u/S 427 of Cr.P.C. was neither invoked in original case nor in appeal – Held – When provision of Section 427 of Cr.P.C. was not invoked in the original case or appeals, then the High Court could not have exercised inherent jurisdiction in a case of this nature – Petition dismissed: *Kalu Vs. State of M.P., I.L.R. (2016) M.P. 2099*

– Section 482 – When exercise of inherent powers is justified to quash the criminal proceedings – Held – To invoke the inherent jurisdiction, the Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that the defence is based on sound, reasonable and indubitable facts and that it would clearly reject and overrule the veracity of the allegations – Further, it should be sufficient to rule out, reject and discard the accusations levelled by the prosecution without the necessity of recording any evidence – For this, material relied upon by the defence should not have been refuted or alternatively being material of sterling and impeccable quality: *Santram Vs. State of M.P., I.L.R. (2016) M.P. 3192*

– Section 482 – Whether complainant is required to be heard – Complainant is not required to be heard in this particular case because neither the applicant has been named in the FIR nor there is any imputation against him for being involved in the offence – Since the application is pending since the year 2006 it is not practical or in the interest of justice to now implead the complainant or some one from his family as a respondent to oppose this application – Charge sheet so far as it relates to the applicant is quashed: *Arun Kapur Vs. State of M.P., I.L.R. (2017) M.P. 1008*

– **Section 482** and Constitution, Article 226 - Practice and Procedure - Documents for Consideration - Interference after framing of charges - Writ Jurisdiction – Held - In a proceeding u/S 482 Cr.P.C., the documents filed by the defence, which are not annexed with the charge-sheet can be taken into consideration - Petitioner filed a copy of the joint petition for mutual divorce, judgment and decree thereof and the same were neither disputed by prosecution nor by the complainant - Court can consider such undisputed documents - Further held, petition u/S 482 Cr.P.C. would not be rendered infructuous simply because the charge has been framed by the Trial Court - Further held, Court may in exercise of powers under Article 226 of the Constitution or u/S 482 Cr.P.C. interfere with proceedings relating to cognizable offence to prevent abuse of the process of any court or otherwise to secure the ends of justice, however power should be exercised sparingly and that too in rarest of rare cases: *Anant Vijay Soni Vs. State of M.P., I.L.R. (2018) M.P. 203*

– **Section 482** and Forest Act, Indian (M.P. Amendment) 2009 (7 of 2010), Section 52-A – Power to hear appeal by appellate authority against the order of release of the vehicle passed by authorised officer, in respect of offence committed on 20.10.2009 – Section 52-A of Indian Forest Act (M.P. Amendment) was published in Gazette on 27.03.2010 – Held – Appellate authority was not competent to exercise his appellate powers according to the provisions of Section 52-A of the Indian Forest Act (M.P. Amendment) of that time when the crime was committed – As the same provides an appeal against the order of confiscation and not against the order of release of vehicle – Amendment made in Section 52-A on 27.03.2010 shall not have retrospective effect – Application is dismissed: *State of M.P. Vs. Saurabh Namdeo, I.L.R. (2016) M.P. 634*

– **Section 482** and Motor Vehicles Act (59 of 1988), Section 180 & 181 – The offending vehicle which was involved in the accident belonged to the company and was not the personal property of the applicant – Therefore the provisions u/S 180 & 181 of Motor Vehicle Act will not be applicable on the applicant: *Arun Kapur Vs. State of M.P., I.L.R. (2017) M.P. 1008*

– **Section 482** and Negotiable Instruments Act (26 of 1881), Section 138, Proviso (b), (c) & 142(1)(b) – Demand Notice – Time Period – Held – Notice of demand must be given within a period of 30 days from the date of receiving information of dishonor of cheque - In the present case, notice was issued after the period of thirty days therefore compliance to Section 138 proviso (b) of the Act of 1881 is not made out – Complaint is not maintainable – Further held – Order passed by the Trial Court is not justified and it is the case of abuse of process of Court and for which inherent powers of the High Court must be exercised u/S 482 Cr.P.C. – It is the duty of the High Court to exercise continuous superintendence over the Courts of Judicial

Magistrates u/S 483 Cr.P.C. – Order framing charge against petitioner is set aside – Petition allowed: *Mohd. Jahin Vs. Nibbaji, I.L.R. (2017) M.P. 1534*

– Section 482 and Penal Code (45 of 1860), Section 90 & 376 – Rape – Consent – Offence registered against petitioner u/S 376 IPC alleging that petitioner committed sexual intercourse with victim on the false pretext/assurance that he will marry her – Challenge to – Held – In the present case, such consent cannot be termed as a voluntary/free consent and act of accused falls squarely under the definition of Rape as consent was procured under misconception of fact as defined u/S 90 IPC – Petitioner committed sexual intercourse in order to appease his lust, all the time knowing that he would not marry her – No case of interference made out – Petition dismissed: *Sharad Khare Vs. State of M.P., I.L.R. (2018) M.P. *54*

– Section 482 and Wakf Act (43 of 1995), Sections 61(3), 68(2) & (3) – Issue involved is that whether the application filed u/S 68(2) and (3) of 1995 Act by the successor mutawalli is not maintainable without seeking permission of the Board as specified u/S 61 (3) of the Act – Held – Scope of Section 61(3) and 68(2) and (3) – Both cannot be put at the same footing – Proceeding initiated by the Board and by the successor mutawalli are totally in different context and cannot be equated to each other – On filing an application u/S 68(2) by the successor mutawalli, Magistrate is duty bound to pass an order specifying the period for delivery of charge and can also exercise power u/S 68(3) convicting the removed mutawalli – Objection raised by the applicant is rejected – Petition stands dismissed: *Mohd. Arif Vs. Mohd. Arif Raeen, I.L.R. (2017) M.P. 189*

– Section 482 & 82 – Inherent Jurisdiction – Scope – Held – Inherent jurisdiction cannot be curtailed or circumscribed by another provisions of Cr.P.C. like Section 82 or 83 Cr.P.C. – Applicants can invoke inherent jurisdiction u/S 482 Cr.P.C. even if they are proclaimed absconders but cannot seek any interim relief or any relief of such nature which amounts to anticipatory bail because grant of anticipatory bail in such cases is restricted by Apex Court: *Chhabiram Tomar Vs. State of M.P., I.L.R. (2019) M.P. 936*

9. Stage of Trial

– Section 482 – Maintainability – Stage of Trial – Present petition was filed after the trial has commenced, charges had been framed and even testimony of two eye witnesses were recorded – Held – Power u/S 482 Cr.P.C. is inherent and plenary in nature which can be exercised at any stage of the criminal prosecution, i.e. right from stage of grievance of non-filing of FIR till any time during pendency of trial in cases where manifest injustice is palpable: *Megha Singh Sindhe (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1017*

– Section 482 – Quashment – Stage of Trial – Held – For exercising power u/S 482 Cr.P.C. for quashing criminal prosecution, stage of trial is material/crucial – Petition as well as submissions are silent about stage of trial, pending since 2017 – Petition liable to be rejected on this ground: *Arif Khan Vs. State of M.P., I.L.R. (2020) M.P. 1460*

– Section 482 and Constitution – Article 21 – Police Investigation – Documents – Held – Where material produced by accused is such to conclude that his defence is based on sound, reasonable and indubitable facts and same rules out the assertions made in complaint, High Court can always look into those documents, even at an early stage of trial – Free and fair investigation is the fundamental right of accused as guaranteed under Article 21 of Constitution: *Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P., I.L.R. (2017) M.P. 2881*

– Section 482 and Penal Code (45 of 1860), Section 420 & 120-B – Quashment of Charge – Held – Manner in which loan was advanced without any proper documents and the fact that respondents are beneficiary of benevolence of their father who was President of Bank, prima facie discloses an offence u/S 420 & 120-B IPC – High Court erred in examining the entire issue at pre-trial stage and quashing the charges – Impugned order set aside – Appeal allowed: *State of M.P. Vs. Yogendra Singh Jadon, I.L.R. (2020) M.P. 1242 (SC)*

– Section 482 and Penal Code (45 of 1860), Sections 420, 467, 468 & 471 – Quashment of Charges – Compromise – Held – As per the present status of the trial, out of 20 witnesses, 16 witnesses have already been examined, hence trial has reached to an advanced stage – Proceedings cannot be quashed at this advance stage on the ground of compromise – Apart from the advanced stage of trial, as per the allegations, accused not only cheated the complainant but by making an attempt to sell the lands of other, accused has tried to cheat other persons also who are cited as witnesses and without there being any compromise between the said witnesses and accused persons, entire proceedings cannot be quashed merely on the ground that first informant has settled his disputes with the accused persons – Petition dismissed: *Haji Nanhe Khan Vs. State of M.P., I.L.R. (2017) M.P. *69*

10. Miscellaneous

– Section 482 – See – Constitution – Article 14, 19 & 21: *Samiksha Jain (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *33*

– Section 482 – See – Constitution – Article 226: *State of M.P. Vs. Sanjay Kumar Koshti, I.L.R. (2018) M.P. 2369 (DB)*

– Section 482 – See – Dowry Prohibition Act, 1961, Section 2 & 4: *Ruchi Gupta (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *44*

– Section 482 – See – Drugs & Cosmetics Act, 1940, Section 25(3) & (4): *Glaxo India Ltd. (M/s.) Vs. State of M.P., I.L.R. (2020) M.P. 257*

– Section 482 – See – Essential Commodities Act, 1955, Section 3 & 7: *Sahil Gupta Vs. State of M.P., I.L.R. (2019) M.P. 1568*

– Section 482 – See – High Court of Madhya Pradesh Rules, 2008, Rule 10-A(1) & (2): *Neeta Soni Vs. State of M.P., I.L.R. (2019) M.P. 1939 (DB)*

– Section 482 – See – Information Technology Act, 2000, Section 67 & 67-A: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 482 – See – Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3: *Syed Parvez Ali Vs. Smt. Nahila Akhtar, I.L.R. (2017) M.P. 1776*

– Section 482 – See – Negotiable Instruments Act, 1881, Section 138: *Shastri Builders Through Proprietor Vs. Peetambara Elivators (M/s.) Through Proprietor, I.L.R. (2019) M.P. *60*

– Section 482 – See – Negotiable Instruments Act, 1881, Section 138 & 141: *Ganesh Vs. Chhidamilal, I.L.R. (2017) M.P. *136*

– Section 482 – See – Negotiable Instruments Act, 1881, Section 138 & 141: *Santosh Vs. State of M.P., I.L.R. (2019) M.P. 1914*

– Section 482 – See – Penal Code, 1860, Section 107 & 306: *Jaiprakash Vaishnav Vs. State of M.P., I.L.R. (2018) M.P. 3001*

– Section 482 – See – Penal Code, 1860, Section 107 & 306: *Laxmi Bai Raghuvanshi (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1308*

– Section 482 – See – Penal Code, 1860, Section 304-B & 498-A: *Megha Singh Sindhe (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1017*

– Section 482 – See – Penal Code, 1860, Section 306 & 107: *Abhay Kumar Katare Vs. State of M.P., I.L.R. (2018) M.P. 1026*

– Section 482 – See – Penal Code, 1860, Section 306 & 107: *Dipti Rathore Vs. State of M.P., I.L.R. (2019) M.P. *66*

– Section 482 – See – Penal Code, 1860, Sections 336, 337, 338, 308 & 384: *Arif Ahmad Ansari (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 972*

– Section 482 – See – Penal Code, 1860, Section 375-Sixthly & 376: *Arif Khan Vs. State of M.P., I.L.R. (2020) M.P. 1460*

– Section 482 – See – Penal Code, 1860, Section 376(2) & 506: *Sanjay Vs. State of M.P., I.L.R. (2018) M.P. 1828*

– Section 482 – See – Penal Code, 1860, Section 379 & 498-A: *Saiyad Asfaq Ali Vs. Kaisar Begum Owaisi, I.L.R. (2017) M.P. 2567*

– Section 482 – See – Penal Code, 1860, Sections 406, 420 & 409: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Section 482 – See – Penal Code, 1860, Section 406 & 498-A/34: *Uma Shankar Vs. State of M.P., I.L.R. (2019) M.P. 2601*

– Section 482 – See – Penal Code, 1860, Section 409 & 120-B: *Nike India Pvt. Ltd. Vs. My Store Pvt. Ltd., I.L.R. (2019) M.P. 1903*

– Section 482 – See – Penal Code, 1860, Section 415 & 420: *Amita Shrivastava (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2868*

– Section 482 – See – Penal Code, 1860, Section 415 & 420: *Praveen Vs. Amit Verma, I.L.R. (2019) M.P. 2164*

– Section 482 – See – Penal Code, 1860, Section 419 & 420: *Nandlal Gupta Vs. Union of India, I.L.R. (2019) M.P. 700 (DB)*

– Section 482 – See – Penal Code, 1860, Section 420: *Kasim Ali Vs. State of M.P., I.L.R. (2016) M.P. 2624*

– Section 482 – See – Penal Code, 1860, Section 420: *Rahul Asati Vs. State of M.P., I.L.R. (2018) M.P. *34*

– Section 482 – See – Penal Code, 1860, Sections 420, 467, 468, 471 r/w Section 34: *Prem Singh Chouhan Vs. State of M.P., I.L.R. (2018) M.P. *33*

– Section 482 – See – Penal Code, 1860, Sections 420, 467, 469 & 475: *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

– Section 482 – See – Penal Code, 1860, Sections 456, 471 & 120-B: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Section 482 – See – Penal Code, 1860, Sections 498-A, 304-B & 34: *Manorama Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 674*

– Section 482 – See – Penal Code, 1860, Section 498-A & 323/34: *Dalveer Singh Vs. State of M.P., I.L.R. (2018) M.P. *62*

– Section 482 – See – Penal Code, 1860, Section 498-A & 506/34: *Mohd. Shafeeq Vs. State of M.P., I.L.R. (2019) M.P. 2605*

– Section 482 – See – Penal Code, 1860, Sections 498-A, 506 & 34: *Shiv Prasad Tiwari Vs. State of M.P., I.L.R. (2020) M.P. 740*

– Section 482 – See – Penal Code, 1860, Section 499 & 500: *Richa Gupta (Smt.) Vs. Gajanand Agrawal, I.L.R. (2018) M.P. 1003*

– Section 482 – See – Penal Code, 1860, Section 499 Explanation 4 & 500: *A.K. Hade Vs. Shailendra Singh Yadav, I.L.R. (2018) M.P. 1807*

– Section 482 – See – Probation of Offenders Act, 1958, Section 4 & 12: *Tulsidas Vs. State of M.P., I.L.R. (2017) M.P. 1265*

– Section 482 – See – Prevention of Corruption Act, 1988, Section 19: *S.S. Agnihotri Vs. State of M.P., I.L.R. (2016) M.P. 2396 (DB)*

– Section 482 – See – Prevention of Food Adulteration Act, 1954, Section 2(ix)(k), Rule 32, 7(ii) r/w Section 16 (1)(a)(ii): *Manik Hiru Jhangiani Vs. State of M.P., I.L.R. (2016) M.P. 2405*

– Section 482 – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2(1): *Pradeep Kori Vs. State of M.P., I.L.R. (2020) M.P. 660 (DB)*

– Section 482 – See – Water (Prevention and Control of Pollution) Act, 1974, Sections 43, 44 & 49: *Manu Anand, Managing Director Vs. M.P. Pollution Control Board, I.L.R. (2016) M.P. 3180*

• **– Section 482 & 127** – Enhancement of Maintenance Allowance – Maintenance allowance was enhanced from Rs. 600/- to Rs. 900/- by order dated 03.08.2005 – Further enhancement declined – Application u/S 482 of Cr.P.C. after 11 years of original order on application u/S 127 of the Cr.P.C. – Held – (A) Entitlement – Wife is entitled for the amount which is modestly consistent with the status of the family – Maintenance allowance is enhanced from Rs. 900/- to Rs. 2500/- – (B) Date from which it is to be paid – Although the delay is attributable to the applicant, however, fact remains that she had been surviving on penurious amount awarded by courts below, for which she can not be held to be responsible – Maintenance allowance at the enhanced rate shall be payable from the date of the order of revisionary court i.e. 03.08.2005: *Chetan Bai (Smt.) Vs. Ramesh Kumar Pathariya, I.L.R. (2016) M.P. 2619*

– Section 482 & 156(3) – Power of the Magistrate to direct S.P. for investigation and to submit report under Section 156(3) of Cr.P.C. where one of the

alleged offences is exclusively triable by the Court of Sessions – Held – In view of first proviso to Section 202(1) of Cr.P.C., a Magistrate who receives a complaint disclosing offences exclusively triable by the Court of Sessions, cannot be debarred from sending the same to the police for investigation u/S 156(3) of Cr.P.C. – Power to order police investigation u/S 156(3) is different from the power to direct investigation conferred by Section 202(1) of the Code – Petition is dismissed: *Rasid Ali Vs. Vishnu Bain, I.L.R. (2016) M.P. 2402*

– Chapter 29 – See – Protection of Women from Domestic Violence Act, 2005, Section 29: *Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi, I.L.R. (2016) M.P. 575*

CRIMINAL TRIAL

– Adverse Remarks against Police Officer – Practice – Opportunity of Hearing – In a criminal case, JMFC passed a judgment where it was remarked that Investigating Officer failed to disclose that who was the driver of the offending vehicle and resultantly the accused could not be punished – JMFC directed I.G. Police to take appropriate action against the police officer (petitioner) – Challenge to – Held – In the said criminal case, all prosecution witnesses turned hostile and accused could not be identified in the Court – Though Judge has unrestricted right to express his views in any matter, but at the same time he should not make unmerited and undeserving remarks, especially in case of witnesses or parties who are not before him, affecting their character and reputation – Opportunity should be afforded to explain or defend the circumstances, which was not done in the present case – Such adverse remarks against petitioner was neither necessary nor justifiable and was uncalled for, which would affect his career – Remarks of JMFC against petitioner expunged – Petition allowed: *Gappu Lal Pal Vs. Director General of Police, I.L.R. (2018) M.P. *42*

– Chemical Analysis/Examination – Held – Sometimes because of nature of poison consumed or administered by or to the deceased, same may not be noticed in chemical analysis – Where evidence is clinching and clear, same cannot be ignored or rejected merely on basis of medical evidence or chemical analyst report: *Krishna Gopal Vs. State of M.P., I.L.R. (2018) M.P. 2207*

– Common Object – Held – Three injured prosecution witnesses received only simple injuries, only one member received grievous injury which goes to show that here was no common object of unlawful assembly to cause murder of deceased or any of his family members – Trial Court's view is erroneous and contrary to medical evidence: *Patru Vs. State of M.P., I.L.R. (2018) M.P. 2239 (DB)*

– Delay in FIR – Held – In FIR, it is narrated that at the time of incident, husband of prosecutrix was out of station, hence FIR was lodged after two days – Delay satisfactorily explained and is not fatal to prosection: *Shiv Kumar Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1750*

– Documentary Evidence – Held – If any documentary evidence is available which is not produced then oral evidence shall be discarded: *Jitendra @ Jeetu Vs. State of M.P., I.L.R. (2017) M.P. *93 (DB)*

– Effect of absence of DNA Test – Held – If DNA sample was not taken from the accused, it would not be fatal to the remaining evidence: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– "Facts in Issue" & "Relevant Facts" – Discussed & Explained: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Ocular & Medical Evidence – Held – Apex Court has held that if there is contradiction between medical and ocular evidence, where medical evidence goes so far that it completely rules out all possibilities of ocular evidence being true, ocular evidence may be disbelieved: *Bhure Singh Vs. State of M.P., I.L.R. (2018) M.P. 929 (DB)*

– Practice and Procedure – Exhibiting Certified Copy of Memorandum of Another Crime – Accused persons were convicted on the basis of their disclosure memo given in another crime and according to which ornaments looted in the present case was recovered – Certified copy of disclosure memo was exhibited – Held – Original documents prepared by police, therefore no prejudice was caused to appellants, if certified copies of memorandum was accepted by the trial Court – Exhibiting the certified copy has no bearing on merits of the case: *Padamnath Vs. State of M.P., I.L.R. (2017) M.P. 3068 (DB)*

– Practice and Procedure – Held – Prosecution is required to prove the guilt beyond reasonable doubt and has to stand on its own legs – Accused has a right to keep mum, however when a particular fact can be said to be within the personal knowledge of accused, then unless he comes out with some plausible explanation regarding the same, his silence or failure to offer any plausible explanation may be taken as an incriminating circumstance against him: *Suraj @ Suresh Vs. State of M.P., I.L.R. (2017) M.P. 1475 (DB)*

– Related Witness – Credibility – Held – Law does not prohibit reliance upon evidence of closely related witnesses, however it requires that such evidence must be appreciated with care and caution – Such evidence cannot be discarded merely on the ground that witnesses are closely related to victim – If such evidence

is found cogent, reliable and trustworthy, it can be relied upon: *Shiv Kumar Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1750*

– Rojnamcha Entries – Credibility – Held – There is no evidence on record to hold even remotely that entries are tampered with and ante-dated – Correctness of entries is not even challenged by the prosecution – In normal course, rojnamcha entries are reliable as they records day to day working of a particular police station until they are disproved by cogent evidence – Rojnamcha entries are not supporting the complainant's version and proves falsehood of the complainant's statement: *Archana Nagar (Ku.) Vs. State of M.P., I.L.R. (2017) M.P. 1162 (DB)*

– Sentence – Quantum – Held – Merely because appeal remained pending for 14 years would not ipso facto make appellant entitle for a lenient view while determining question of sentence: *Krishna Gopal Vs. State of M.P., I.L.R. (2018) M.P. 2207*

CUSTOMS ACT (52 OF 1962)

– Liability to Pay Demurrage Charges – Petitioner, a company engaged in business of import and export, imported an consignment which did not get clearance from the custom authorities and were kept in the Inland Container Depot (ICD) – Custom authorities claimed demurrage charges – Challenge to – Held – Supreme Court has held, that once consignment is handed over to Port Trust and the goods are detained for want of clearance from custom authorities, demurrage has to be collected from the consignee – Respondents were justified in claiming demurrage charges from petitioner company who is liable to pay the same till goods were released from ICD – Petition dismissed: *Ideal Carpets Ltd. Vs. Union of India, I.L.R. (2017) M.P. *116 (DB)*

CUSTOMS BROKERS LICENSING REGULATIONS, 2013

– Regulation 6(1) & 7(1) and Customs House Agent Licensing Regulations, 2004, Regulation 8 – Grant of Licence – Eligibility & Procedure – Held – As per proviso to Regulation 6(1), applicant who already passed the examination under Regulation 2004 is not required to appear for any further examination – Petitioner already filed application and passed the examination under Regulation of 2004, he is not required to submit application for grant of licence under Regulation 7(1) of Regulation 2013 – No period of validity of examinations under Regulation of 2004 – Respondents wrongly interpreted that there is two months period for submitting application after declaration of result – Commissioner liable to grant licence within 2 months from date of deposit of fee by applicant who has already passed the examination – Respondent directed to issue Licence to petitioner – Impugned order

quashed – Petition allowed: *Sanjay Kumar Joshi Vs. The Commissioner, Customs, Central Excise, Indore, I.L.R. (2019) M.P. *51*

CUSTOMS, CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 1995

– Rule 5 – Determination of date from which the amount or rate of drawback is to come into force – Notification categorically mentions the effective date thereof – Shall come in force on mentioned date – Not retrospective: *Suraj Impex (India) Pvt. Ltd. Vs. Secretary, Union of India, I.L.R. (2016) M.P. 59 (DB)*

CUSTOMS HOUSE AGENT LICENSING REGULATIONS, 2004

– Regulation 8 – See – Customs Brokers Licensing Regulations, 2013, Regulation 6(1) & 7(1): *Sanjay Kumar Joshi Vs. The Commissioner, Customs, Central Excise, Indore, I.L.R. (2019) M.P. *51*

D

DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, M.P. (36 OF 1981)

– Section 11 & 13 – See – Penal Code, 1860, Section 302 r/w 34 & 394 r/w 397: *Narendra @ Chunna Kirar Vs. State of M.P., I.L.R. (2017) M.P. 364 (DB)*

– Section 11 & 13 – See – Penal Code, 1860, Sections 302/34, 394/34 & 449: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

– Section 11 & 13 – See – Penal Code, 1860, Sections 302, 394, 460 & 34: *Sonu @ Sunil Vs. State of M.P., I.L.R. (2020) M.P. 1816 (SC)*

– Section 11 & 13 – See – Penal Code, 1860, Section 364-A: *Ram Bhawan @ Lalloo Vs. State of M.P., I.L.R. (2018) M.P. 1726 (DB)*

– Section 11/13 – See – Criminal Procedure Code, 1973, Section 320 & 482: *State of M.P. Vs. Dhruv Gurjar, I.L.R. (2020) M.P. 1 (SC)*

– Section 11/13 – See – Criminal Procedure Code, 1973, Section 482: *Ashish @ Bittu Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2114*

– Section 13 – See – Penal Code, 1860, Section 302 & 384: *Jitendra @ Jeetu Vs. State of M.P., I.L.R. (2017) M.P. *93 (DB)*

DEBT RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993

– Rule 12(6) and Debt Recovery Tribunal Regulation of Practice, 1998, Regulation 31 & 32 – Evidence on Affidavit – Application for cross-examination – Scope under Article 227 of Constitution – In respect of non-payment of loan amount, Bank filed a recovery case against the petitioners which was allowed in favour of Bank – Appeal filed by petitioners was also dismissed – Held – As per the Rule 12(6) of the Rule of 1993, evidence may be filed on affidavit – In the present case, no application was filed by the petitioners to cross-examine the deponents/witnesses, therefore, in absence of such application under Regulation 31 and 32 of the Regulation of 1998, it cannot be said that no opportunity was granted to them – Further held – In a case, where mixed question of law and fact is involved, there is a limited scope for interference under Article 227 of the Constitution – Interference can be done when there is patent perversity or gross and manifest failure of justice or principle of natural justice has been flouted in the order passed by the court below – No error committed by the Tribunal or the Appellate Tribunal – Petition dismissed: *Ashirwad Industries (M/s.) Vs. Industrial Development Bank of India Ltd., I.L.R. (2017) M.P. *33 (DB)*

DEBT RECOVERY TRIBUNAL REGULATION OF PRACTICE, 1998

– Regulation 31 & 32 – See – Debt Recovery Tribunal (Procedure) Rules, 1993, Rule 12(6): *Ashirwad Industries (M/s.) Vs. Industrial Development Bank of India Ltd., I.L.R. (2017) M.P. *33 (DB)*

DENTISTS ACT (16 OF 1948)

– Sections 10 A (1) (b) & 10 A (4) and Dentists Amendment Act (30 of 1993), Sections 10 (A) (1) (b) (II) & 10 B (3) – Prior Approval – Increase in Admission – Dental Council of India Regulation 2006 – Renewal of permission for admitting 4th Batch of Students – Application of the petitioner was incomplete due to non submission of the University affiliation within time schedule prescribed in the regulations for the academic year 2015-16 – Also petitioner admitted three illegal admissions in the speciality of Orthodontics and Paedodontics for the academic year 2015-16 without prior approval of Union of India u/S 10 A (4) of the Dentists Act 1948 – Petition dismissed: *Modern Dental College & Research Centre Indore Vs. Government of India, I.L.R. (2016) M.P. 3007 (DB)*

– Section 10-B as amended by Amendment Act, (30 of 1993) – High Court cannot disturb that balance between the capacity of the institution and the

number of admissions on "Compassionate ground" and to issue a fiat to create additional seat which amounts to a direction to violate the provision: *Sir Aurobindo College Dentistry Vs. Union of India, I.L.R. (2017) M.P. 848 (DB)*

– Sections 39 & 55(2)(h)(i) – Dental Council of India regulation makes it very clear that the Petitioner Dental College is statutory obliged to have requisite infrastructure and facilities as per DCI norms and also to apply to the Dental Council of India for such renewal well in advance for the next academic session: *Modern Dental College & Research Centre Indore Vs. Government of India, I.L.R. (2016) M.P. 3007 (DB)*

DENTISTS AMENDMENT ACT (30 OF 1993)

– Sections 10(A)(1)(b)(II) & 10B(3) – See – Dentists Act, 1948, Sections 10 A (1) (b) & 10 A (4): *Modern Dental College & Research Centre Indore Vs. Government of India, I.L.R. (2016) M.P. 3007 (DB)*

DIRECTORATE OF SOCIAL JUSTICE AND DISABLED PERSONS WELFARE (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 2015

– Rule 8(2) & 10 – Appointment – Lecturer – Educational Qualifications – Petitioner, in top of selection list, was called for interview but later her candidature rejected – Held – Certificate of training which was undergone by petitioner was not recognized as one of the educational qualification under the Rules – Petitioner has not earned any experience of teaching after obtaining B.Ed. degree – If petitioner is permitted to appointment without fulfilling eligibility criteria by virtue of Rule 10, then Rule 8(2) would be in otiose – Respondent can reject the candidature before publishing final select list – Further, it is settled law that despite selection, candidate has no right to claim appointment – Petition dismissed: *Priti Soni Vs. State of M.P., I.L.R. (2019) M.P. 818*

DISASTER MANAGEMENT ACT (53 OF 2005)

– Section 6(2)(i) & 10(2)(i) – Liquor Trade – Covid-19 Pandemic – Excise Policy 2020-21, Clause 18.3 – General Licence Conditions, Clause 33 – Amendment – Validity – Grant of Licence from Retrospective date – Held – Period of licence was 01.04.2020 to 31.03.2021 whereas licence was issued on 04.05.2020 – Merely because licence so issued bear the period of licence from 01.04.2020 to 31.03.2021, does not mean that licence is effective from such retrospective date and petitioners would be charged the prescribed fee for period for which they were not allowed to operate liquor vends – State decided to waive off licence fee for the period for which

petitioners were unable to run their liquor shops due to lockdown – By amendment State also gave option to extend the period of licence upto 31.05.2021 – Further, petitioners in their affidavit have undertaken that State could carry out amendment in the policy 2020-21 during the currency of licence which would be binding on them – It will operate as promissory estoppel against petitioners: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 6(2)(i) & 10(2)(i) – See – Contract Act, 1872, Section 2(b) & 5: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

DISSOLUTION OF MUSLIM MARRIAGES ACT (8 OF 1939)

– Section 2 – See – Criminal Procedure Code, 1973, Section 125: *Munni Devi (Smt.) Vs. Pritam Singh Goyal, I.L.R. (2017) M.P. *106*

DOCTRINE OF ESTOPPEL

– Applicability – Held – Constitutional body like PSC is under a constitutional obligation to examine answer sheets of candidates with fairness, seriousness and due care – If it fails to discharge the said obligation and commits a mistake or illegality, it cannot take shelter of the Doctrine of 'estoppel': *Rohit Jain Vs. M.P.P.S.C., I.L.R. (2018) M.P. 2431*

DOCTRINE OF "PAY AND RECOVER"

– Practice – Held – In view of the law laid down by the apex Court in Manager v/s Saju P. Paul, (2013) 2 SCC 41, the doctrine of "pay and recover" shall continue to be applied during the pendency of the reference, pending before the Larger Bench: *Branch Manager, The Oriental Insurance Co. Ltd., Satna Vs. Smt. Ranju Yadav, I.L.R. (2018) M.P. 101 (DB)*

DOCTRINE OF "PROMISSORY ESTOPPEL"

– Applicability – Held – Apex Court concluded that "promissory estoppel" cannot be pleaded against an authority of Government who owe a duty to public and is acting fairly – In present case, in view of that duty, Government is obliged to examine entire relevant revenue record minutely and ensure that a valuable government land is not grabbed or enjoyed by anybody without any legal entitlement/title – No promise can be enforced which is against public policy – Impugned notice is not without jurisdiction: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

DOCTRINE OF "RES-JUDICATA" & "ISSUE ESTOPPEL"

– Practice – Held – Petitioner approached the Apex Court against the order passed by this Court in earlier round of litigation – Matter was withdrawn with liberty to raise issue of sanction before Trial Court – No interference made by Apex Court in the impugned order – Petitioner cannot be permitted to re-agitate the same matter already settled by prior litigation – For validity of sanction, this Court is bound by the order earlier passed by this Court – Application dismissed: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

DOUBLE JEOPARDY

– Second Enquiry – Held – Rule of double jeopardy does not bar a second enquiry but the proceedings can be reopened only if Rule permits the government: *RN Mishra Vs. State of M.P., I.L.R. (2019) M.P. *56*

DOWRY PROHIBITION ACT (28 OF 1961)

– Section 2 – See – Penal Code 1860, Section 304-B/34 & 498-A: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 2 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceeding – Charge u/S 498-A IPC against petitioners already quashed in separate petition – Held – Allegations of demand of dowry are omnibus in nature but that by itself cannot persuade this Court to interfere with prosecution case, where prima facie, foundational ingredients of offence appears to be made out – No ground of failure of justice exist – Application dismissed: *Ruchi Gupta (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *44*

– Section 2 & 4 and Penal Code (45 of 1860), Section 498-A – Demand of Dowry – Definition & Scope – Held – Definition of demand of dowry is couched in generic and wide language and is not as exhaustive and restrictive in its scope, sweep and application as definition of "Cruelty" u/S 498-A IPC – Legislature has kept the contours of "dowry demand" flexible and inclusive: *Ruchi Gupta (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *44*

– Section 3 & 4 – Dowry – In a case where marriage has not been performed and only engagement has been performed, if any illegal demand is made in regard to dowry, the accused can be charged with offence u/s 3 & 4 of the Dowry Prohibition Act: *Suresh Chand Sharma Vs. State of M.P., I.L.R. (2016) M.P. 1207*

– Section 3/4 – See – Criminal Procedure Code, 1973, Section 82 & 438: *Rajni Puruswani Vs. State of M.P., I.L.R. (2020) M.P. 1477*

– Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 177 & 178: *Anurag Mathur Vs. State of M.P., I.L.R. (2017) M.P. 2031*

– Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 438: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 482: *Mohit Jain Vs. State of M.P., I.L.R. (2017) M.P. *97*

– Section 3/4 – See – Criminal Procedure Code, 1973, Section 482: *Rajesh Kumar Gupta Vs. State of M.P., I.L.R. (2017) M.P. 989*

– Section 3 & 4 – See – Penal Code, 1860, Section 304-B & 498-A: *Manohar Rajgond Vs. State of M.P., I.L.R. (2018) M.P. 608*

– Section 3 & 4 – See – Penal Code, 1860, Section 304-B & 498-A: *Utkarsh Saxena Vs. State of M.P., I.L.R. (2019) M.P. 653*

– Section 3 & 4 – See – Penal Code, 1860, Section 406 & 498-A/34: *Uma Shankar Vs. State of M.P., I.L.R. (2019) M.P. 2601*

– Section 3 & 4 – See – Penal Code, 1860, Sections 498-A, 304-B/302 & 306: *Gourishankar Nema Vs. Prabhudayal Nema, I.L.R. (2017) M.P. 765 (DB)*

– Section 3/4 – See – Penal Code, 1860, Sections 498-A, 506 & 34: *Shiv Prasad Tiwari Vs. State of M.P., I.L.R. (2020) M.P. 740*

– Section 3 & 4 – See – Penal Code, 1860, Section 498-A & 506/34: *Mohd. Shafeeq Vs. State of M.P., I.L.R. (2019) M.P. 2605*

– Section 3(1) & 4-A – See – Criminal Procedure Code, 1973, Section 378(3) & 372: *Vinod Kumar Sen Vs. Smt. Shanti Devi, I.L.R. (2017) M.P. *85 (DB)*

– Section 4 – See – Penal Code, 1860, Sections 302, 304-B, 498-A & 201: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

– Section 4 – See – Penal Code, 1860, Sections 498 (A), 304 (B), 302/302 r/w Section 34, 306/306 r/w Section 34: *State of M.P. Vs. Komal Prasad Vishwakarma, I.L.R. (2016) M.P. 3199 (DB)*

– Section 4 – See – Penal Code, 1860, Sections 498-A & 506/34: *Preeti Vs. Neha, I.L.R. (2016) M.P. 2132*

DRUGS & COSMETICS ACT (23 OF 1940)

– Section 25(3) & (4) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Right of Accused – Expiry of Seized Sample – Effect –

Held – Seized sample was not sent to CDL within time – Sample expired – Valuable right of petitioner u/S 25(3) & (4) of the Act was defeated – Continuation of prosecution will be a futile exercise – Further, particulars of offence noted were not on basis of report of CDL or Government Analyst, thus not sustainable – Proceedings quashed – Application allowed: *Glaxo India Ltd. (M/s.) Vs. State of M.P., I.L.R. (2020) M.P. 257*

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT (21 OF 1954)

– Civil Suit – Jurisdiction of Court – Telecast of advertisement of an Ayurvedic product 'Asthijivak' in Indore – Respondent at Mumbai issued notice to stop telecasting the advertisement – Plaintiff filed suit at Indore seeking declaration of such notices as illegal, null and void and without jurisdiction and also prayed for permanent injunction restraining the respondents from taking any steps to stop telecasting the advertisement – Trial Court returned the plaint to plaintiff on the ground of jurisdiction – Challenge to – Held – Trial Court committed patent illegality and jurisdictional error in holding that the Court at Indore lacked jurisdiction merely because the notices were issued in Mumbai – In respect of the point of territorial jurisdiction, Court must take all the facts pleaded in support of cause of action, without entering into an inquiry as to the correctness or otherwise of the said facts – Plaintiff, a sole distributor of the said ayurvedic product is having the office at Indore, advertisement was telecasted at Indore and stoppage of telecast had adversely effected the business of plaintiff at Indore – A part of cause of action has arisen at Indore – Suit filed at Indore is maintainable – Appeal allowed: *Tele World Marketing (M/s.) Vs. The Joint Commissioner (Drugs), Food & Drugs Administration, I.L.R. (2018) M.P. 108*

DUE PROCESS OF LAW

– How far stretchable – When party approaches the Court with a suit for injunction and fails to set up a good case, he cannot say that the other party must institute an action for enforcing his rights – Even if injunction suit is decided, 'due process of law' is fulfilled: *Jai Vilas Parisar Vs. Alok Kumar Hardatt, I.L.R. (2016) M.P. 1487*

E

EASEMENT ACT (5 OF 1882)

– Section 52 – Licenses – Held – By virtue of employment, defendant no. 1 was permitted to use suit premises as resident without rent – Defendant no. 4 and 5 being son and daughter-in-law was living with him – Defendant no. 1 expired – Suit for eviction, mesne profit and possession by respondent/plaintiff – Held – Induction

of defendant no. 1 alongwith no. 4 and 5 in suit property was permissive in nature – Mere possession is not sufficient and ingredients of animus possidendi must be existing either at commencement of possession or continuation thereof – Suit property is in ownership of plaintiffs – Appeal dismissed: *Hemant Kumar Hala (Dr.) @ Sem Vs. Senodical Board of Health Services, I.L.R. (2018) M.P. 2451*

– Section 52 & 60 – Grant of Land by Government – License – Held – Suit land was granted for use as a playground without any consideration and fee, thus comes in purview of definition of License as defined u/S 52 of the Act of 1882 and in absence of specific pleading and proof of term of grant, same is revocable u/S 60 of the Act – Licensee has no right to claim relief of injunction against the grantor – Appellant/plaintiff failed to plead the terms of grant and further, no evidence adduced to prove the same – Appeal dismissed: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

EDUCATION GUARANTEE SCHEME, M.P., 1997

– See – Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008: *Vinod Rathore Vs. State of M.P., I.L.R. (2017) M.P. 823*

EDUCATION SERVICE (COLLEGIATE BRANCH) RECRUITMENT RULES, M.P., 1990

– Article 15, 16(1) & (2) – See – Service Law: *Mukesh Kumar Umar Vs. State of M.P., I.L.R. (2018) M.P. 1601 (DB)*

ELECTION PETITION

– Amendment – There is complete prohibition against any amendment being allowed which may have the effect of introducing any material fact not already pleaded: *Vivek Tiwari (Dr.) Vs. Shri Divyaraj Singh, I.L.R. (2016) M.P. 1995*

– Proper Parties – No other person can be allowed to be impleaded as a respondent howsoever desirable it may be – Even if there are specific and direct allegations against the officers/officials of the Election Commission, they cannot be allowed to be impleaded as respondents on the plea that otherwise they would not have any opportunity to explain their position and would thus be condemned unheard: *Vivek Tiwari (Dr.) Vs. Shri Divyaraj Singh, I.L.R. (2016) M.P. 1995*

ELECTRICITY ACT (36 OF 2003)

– Sections 61, 63 & 86(1)(e) – Tariff Regulations – Held – As per the Tariff order dated 17.03.2016, tariff of Rs. 5.92 per unit would apply to projects

commissioned on or before 31.03.16 while the new rate of Rs. 4.78 per unit would apply to projects commissioned on or after 01.04.2016 – Actual date of commissioning would determine the applicable tariff – SLDC data indicated that actual injection of power into grid took place on 01.04.2016 – Appellants directed to process application of R-1 for execution of agreement on that basis with effect from 01.04.2016 – Impugned judgments set aside – Appeals disposed: *M.P. Power Management Co. Ltd. Vs. M/s. Dhar Wind Power projects Pvt. Ltd., I.L.R. (2020) M.P. 263 (SC)*

– Section 62(3) and Gas Cylinder Rules, 1981, Rule 2(xxv) – Tariff – Manufacture of Gas – Commercial Activity or Industrial Activity – Held – Petitioner engaged in LPG bottling and filling of petromax and activities carried out in such plants cannot come within the purview of an industrial activity but fall under commercial category – Respondents justified in charging the tariff at commercial rate – Further held – The prayer of petitioner to direct respondents to raise bill for actual electricity consumed and not at minimum tariff cannot be accepted in view of the Apex Court judgment in AIR 2001 SC 238 – Petition dismissed: *Shivco L.P.G. Bottling Co. Vs. M.P. Electricity Board, I.L.R. (2017) M.P. *113*

– Section 86(1)(f) – See – M.P. Electricity Regulatory Commission (Co-Generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010, Regulation 12.2: *Ascent Hydro Projects Ltd. (M/s.) Vs. M.P. Electricity Regulatory Commission, I.L.R. (2018) M.P. 1415*

– Section 111 – See – Vidyut Sudhar Adhiniyam, M.P., 2000, Section 41: *Jaiprakash Associates Ltd. Vs. Madhya Pradesh Electricity Regulatory Commission, I.L.R. (2017) M.P. 61*

– Section 126 – See – Constitution – Article 226: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

– Section 126 – Unauthorized Use of Electricity – Sanctioned Load – Violation – Load was found more than sanctioned in the unit of Respondent No.2 – Recovery order passed by petitioner company for violation of provisions of Section 126 for illegally consumed electricity – Appellate authority quashed the recovery order and directed re-assessment – Challenge to – Held – In view of the provision of Section 126, it is not a case of unauthorized use of electricity, but is a case of connected load beyond the sanctioned load – Even in report submitted by petitioner, there is no such allegation of unauthorized consumption of electricity – No illegality by Appellate authority while quashing the recovery – Petition dismissed: *Managing Director, M.P.P.K.V.V. Co. Ltd. Vs. Presiding Officer, Appellate Authority, I.L.R. (2018) M.P. *73*

– Sections 126(4) & (5), 135 & 154(5) – Electricity Theft Case – Civil Liability – Petitioner held guilty for offence u/S 135 of the Act of 2003 and civil liability was calculated applying Section 126 (5) & (6) of the Act – Challenge to – Held – Trial Court wrongly applied provisions for calculating the loss cost – It was obligatory upon trial Court to determine civil liability applying Section 154(5) of the Act of 2003 which prescribes procedure for determination of civil liability for theft of electrical energy in terms of money – Impugned order relating to determination of civil liability is set aside – Revision allowed: *M.P. Rajya Vidyut Mandal (M.P.P.K.V.V. Co. Ltd.) Vs. Indrajeet Sahu, I.L.R. (2017) M.P. *141*

– Section 126(6) – See – Constitution – Article 226 & 227: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

– Section 127(6) – Rate of Interest – Held – As per Section 127(6), interest @ 16% p.a. is chargeable, hence Court could not have issued directions for charging interest at the rate contrary to statutory provisions – It is error apparent on face of record: *The Superintending Engineer (O & M) M.P. Paschim Kshetra Vidyut Vitran Co. Vs. National Steel & Agro Industries Ltd., I.L.R. (2020) M.P. 1375 (DB)*

– Section 135 – See – Criminal Procedure Code, 1973, Section 195(1)(a)(i) & 216: *Pooran Singh Jatav Vs. State of M.P., I.L.R. (2017) M.P. *56*

– Section 135 and Criminal Procedure Code, 1973 (2 of 1974), Section 200 – Theft of electricity – Complaint – If written complaint is not filed before police station, there is no bar to file a private complaint – Similarly, if written complaint is filed before the police station concerned, in that event a private complaint can also be filed and the court can take cognizance u/s 151 of the Act: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Kalyan Singh Chauhan, I.L.R. (2016) M.P. 907*

– Section 135(1) & 138-B – See – Criminal Procedure Code, 1973, Section 482: *Somdatt Mishra Vs. State of M.P., I.L.R. (2019) M.P. 477*

– Sections 138, 151 & 153 and Criminal Procedure Code, 1973 (2 of 1974), Section 251 – Jurisdiction – Case registered and summons issued against respondent for offence punishable u/S 138 of the Act of 2003 – Case was dropped by Magistrate exercising power u/S 251 Cr.P.C. – Challenge to – Held – Once the summons have been issued to accused, the Special Court constituted u/S 153 of the Act of 2003 does not have jurisdiction to drop legal proceedings by exercising powers u/S 251 Cr.P.C. thereby discharging the accused – Impugned order set aside – Application allowed: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Deependra Bhate @ Deependra Ghate, I.L.R. (2017) M.P. *126*

– Section 151 – Cognizance of offences – Held – That even when a Magistrate is to take cognizance on the police report, that would not mean that no other option is available and the private complaint cannot be lodged: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Ramswaroop Kushwah, I.L.R. (2016) M.P. 913*

– Section 164, Electricity (Supply) Act, (54 of 1948), Section 42 and Telegraph Act, (13 of 1885), Sections 10 & 16(1) – Works of Licensees Rules, 2006, Rule 3(4) – Whether Electric Transmission Co. is required to obtain prior consent of the petitioner, who is owner of land, to install high tension electricity supply transmission tower on his land – Held – As per the Act and Rules, the Electric Transmision Co. is not required to obtain prior permission of the petitioner before installation of the Tower and the authority have power to enter upon any person's land to install high tension transmission tower and the petitioner is at best entitled only for compensation to the extent of damages suffered: *Monica Nagdeo (Smt.) Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2016) M.P. 2209*

– Section 164 & 165 – Erection of Transmission Line from Personal Property – Acquisition – Compensation of Land and Crops – Appellant submitted that his land was acquired for installing the overhead transmission line – Collector determined the amount of compensation – Challenge to – Held – Acquisition of land deprives the owner of the title and possession whereas installation of overhead transmission line deprives the owner of use of surface of land – Under such acquisition, land continues to vest with the land owner – It is not a case of acquisition of land as contemplated in Section 165 of the Act of 2003 but use of surface of land for erecting transmission line as contemplated in Section 164 of the Act of 2003 which makes the Indian Telegraph Act, 1885 applicable – No infirmity in the impugned order – Appeal dismissed: *Bhawani Singh Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2018) M.P. 1389 (DB)*

ELECTRICITY DUTY ACT, M.P. (10 OF 1949)

– Section 3(1), Part B, Entry 3 and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity – Held – If appellant has a mining licence and carrying out mining activity, being covered under the Act of 1952 and his stone crushing unit is situated in or adjacent to mine, he will be liable to pay the rate of electricity duty as provided in Section 3(1), Entry 3 of Part B (Table) of Act of 1949: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

– Section 3(1), Part B, Entry 3 and Mines Act (35 of 1952), Section 2(1)(j) – Stone Crushing Units – Rate of Electricity – Held – Rate of duty u/S 3(1) Entry 3 of Part B (Table) as applicable to mines, cannot be applied/enforced upon those stone

crushing units which are only carrying on stone crushing activity whether or not situated in or adjacent to a mine and are not involved in the mining activity: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

– Section 3(1), Part B, Entry 3 and Vidyut Shulk Adhiniyam, M.P. (17 of 2012), Section 3(1), Part A, Entry 6 – Applicability – Held – Act of 2012 came into force w.e.f. 25.04.2012 and same is not applicable with retrospective effect: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

ELECTRICITY (SUPPLY) ACT (54 OF 1948)

– Section 42 – See – Electricity Act, 2003, Section 164: *Monica Nagdeo (Smt.) Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2016) M.P. 2209*

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT (19 OF 1952)

– Object – To provide institution of provident funds and deposit linked scheme for the employees working in factories and establishment to ensure that employees get provident fund after retirement: *Grasim Industries Ltd. Vs. Duley Singh, I.L.R. (2017) M.P. *19*

– Section 2(b)(ii) & 6 – "Basic Wages" – Exclusions – Held – This Court earlier concluded that any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "Basic Wages": *The Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir, I.L.R. (2019) M.P. 1595 (SC)*

– Section 2(b)(ii) & 6 – Deductions – Expression "Basic Wages" – Allowances – Held – No material placed by establishments to show that allowances paid to employees were either variable or were linked to any incentive for greater output by employee and were not paid across the board to all employees in a particular category or were being paid especially to those who availed opportunity – Wage structure and components of salary examined on facts by the authority and Appellate Authority and concluded that allowances were essentially a part of basic wages camouflaged as part of allowance so as to avoid deductions and contribution to provident fund account of employees – Such allowance fall within the definition of "Basic Wages" – Appeals preferred by establishments are dismissed and the one preferred by Regional PF Commissioner is allowed: *The Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir, I.L.R. (2019) M.P. 1595 (SC)*

– Section 7-I & 7-Q – Appeal – Maintainability – Held – Order passed by authority u/S 7-Q of the Act of 1952 is not appealable and no appeal u/S 7-I would be maintainable: *Sumedha Vehicles Pvt. Ltd. (M/s) Vs. Central Government Industrial Tribunal, I.L.R. (2020) M.P. 2081*

– Section 7-Q – Interest on Delayed Payment – Appeal – Held – While levying interest on delayed payment made by employer, authority is not required to determine any disputed question of fact – Rate of interest is already provided u/S 7-Q – No discretion with the authority to determine liability of employer – No appeal lies against order passed u/S 7-Q of the Act: *Sumedha Vehicles Pvt. Ltd. (M/s) Vs. Central Government Industrial Tribunal, I.L.R. (2020) M.P. 2081*

– Section 7-Q & 14-B – "Interest" & "Damages" – Held – "Interest" and "damages" are two different provision – "Interest" is payable on delayed payments without any further adjudication whereas recovery of "damages" is not automatic due to delayed payments of amount due but authority may recover damages: *Sumedha Vehicles Pvt. Ltd. (M/s) Vs. Central Government Industrial Tribunal, I.L.R. (2020) M.P. 2081*

– and Constitution – Article 226 – Executive Instructions – Held – Where the Act, Rules or Scheme is silent, then the gap can be filled up by issuing executive instructions – Such instructions can only supplement the Rule or Scheme, but cannot supplant the Rule or Scheme: *Om Prakash Vijayvargiya Vs. Employees Provident Fund Organization, I.L.R. (2020) M.P. *5*

EMPLOYEES' STATE INSURANCE ACT (34 OF 1948)

– Section 2(9) & 2(22) – "Employee" – Directors of Company – Held – Director of a company, who had been receiving remuneration for discharge of duties assigned to him, falls within the definition of "Employee" for the purpose of the Act of 1948 and thus contribution was payable to Corporation in regard to the amount paid to Directors – Impugned order set aside – Appeal allowed: *Employees' State Insurance Corporation Vs. Venus Alloy Pvt. Ltd., I.L.R. (2019) M.P. 973 (SC)*

ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ACT (44 OF 2016)

– Section 31-B – Rights of Secured Creditors – Commercial Tax Department issued sale proclamation of property of a company for recovering tax dues – Said property was mortgaged with Petitioner Bank, who challenged the action of the Government – Held – By virtue of amendment in the Act of 2016, right of secured

creditors to realize secured dues and debts dues payable to secured creditors by sale of assets over which security has been created, is having priority over all other debts and government dues including revenue, taxes, cesses and rates due to Central Government, State Government and local authorities – Further held – Section 31-B of Act of 2016 makes it clear that dues of Bank are to be recovered at first instance, having an overriding effect over all other enactments including provisions of MP VAT Act, Central Sales Tax Act, Entry Tax Act and any other Act – Notice issued by Government is bad in law and deserves to be quashed – Petitioner bank is having priority to auction the property, in light of the amendment – Impugned proclamation quashed – Petition allowed: *Bank of Baroda Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (2018) M.P. 1078*

ENTRY TAX ACT, M.P. (52 OF 1976)

– Section 2 & 3(1) – Entry Tax on Second Hand Vehicles – Petitioner company engaged in business of purchase/exchange of old/used vehicles by brand name of Maruti True Value – Taxation department imposed entry tax on second hand vehicles purchased/sold within the local area of Madhya Pradesh – Challenge to – Held – Petitioner is already paying entry tax on vehicles brought from outside the State, in respect of which no entry tax has been paid at all – Respondents cannot charge entry tax on those vehicle which are sold within the local area of State and which have already entered the local area and for which entry tax has already been paid – In such cases, there is only change of ownership –Entry tax assessed is bad in law – Impugned order of assessment quashed – Respondents directed to refund the amount recovered – Petition allowed: *Patel Motors (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. *98 (DB)*

– Section 2(1)(aa) & 3(1) – Dealer – Telecommunication Services – Liability for Taxation – Held – As per definition of Section 2(1)(aa) "entry of goods into a local area" means entry of goods into that local area from any place outside other than that local area – Assesse, in order to do the business brings plant & machinery, equipment etc to the local area from outside – Entry Tax is chargeable on entry of such goods – Appellant/assesse is engaged in activities of supply or distribution of goods for its consumption and use and thus is a "Dealer" as per the Act of 1976 and is covered by charging Section 3(1) of the Act – Assesse liable to pay entry tax – Petitions/Appeals & TR dismissed: *Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2019) M.P. 102 (DB)*

– Section 3(1) – SIM Cards – Liability for Taxation – Held – Assesse company though not selling the SIM cards to its customers, but are supplying the same in order to provide services – SIM cards can be termed as "goods" for purpose of Entry Tax as the same is being used and consumed in order to provide service to

the customer by the Assesse – It will fall under the incidence of taxation u/S 3(1) of the Act of 1976: *Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2019) M.P. 102 (DB)*

– Section 3(1) and VAT Act, M.P. (20 of 2002), Sections 2(1), 2(1)(a) & (d) – Liability for Taxation – Classification – Held – Entry Tax is not part and parcel of VAT Act, where a dealer who is covered under the VAT Act is only liable to Entry Tax – Any businessman who brings goods for consumption, use or sale is liable to pay Entry Tax whether he is a dealer under VAT Act or not: *Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2019) M.P. 102 (DB)*

– Section 13 – See – Limitation Act, 1963, Section 5: *Hawkins Cookers Ltd. (M/s.) Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (2019) M.P. 2261 (DB)*

ESSENTIAL COMMODITIES ACT (10 OF 1955)

– Section 3/7 – See – Criminal Procedure Code, 1973, Section 482: *Balchand Gupta Vs. State of M.P., I.L.R. (2017) M.P. 184*

– Section 3/7 – See – Criminal Procedure Code, 1973, Section 482: *Rasmeet Singh Malhotra Vs. State of M.P., I.L.R. (2016) M.P. 329*

– Section 3 & 7 – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Sections 2(k), 2(l), 7 (a) & 20: *Nitin Sharma Vs. State of M.P., I.L.R. (2018) M.P. 555*

– Section 3 & 7 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceeding – FIR – Ingredients – Irregularities in Fair Price Shop – Held – In the FIR, non-mention of particular clause of particular Control Order or name of Control Order promulgated u/S 3 of the Act of 1955, not by itself render the FIR vitiated, provided, the FIR discloses allegation of breach of any of the Orders promulgated u/S 3 of the Act – In instant case, Pre-requisites of Section 7 are satisfied to attract its penal provision – No case for interference made out – Application dismissed: *Sahil Gupta Vs. State of M.P., I.L.R. (2019) M.P. 1568*

– Section 3 & 7 and Public Distribution System (Control) Order, M.P, 2009, Clause 11(9) & 11(11) – Applicability – Excess kerosene oil and some discrepancies in records found with Sahakari Samiti – FIR registered against Officers of Samiti – Held – Clause 11(9) of Control order, 2009 would not apply in case of "Kerosene Oil" and is applicable only in case of "Food grains" – Clause 11(11) has no application, thus no prior show cause notice in writing nor opportunity of hearing was required to be given to petitioners before registration of FIR – Petition dismissed: *Naresh Rawat Vs. State of M.P., I.L.R. (2019) M.P. *32*

– Section 7(1)(A)(II) & 7(2), Seeds Act (54 of 1966), Section 19, Seeds Rules, 1968, Rule 8 and Seeds (Control) Order, 1983 – Packaging of Seeds – Held – If person deals in business of seeds without license/permit, he would be liable under provisions of Act of 1955 and Control Order, 1983 but prosecution failed to show any Rules of State government requiring license for labelling and packaging of seeds – Applicant already having license to store, sell and export the seeds – No allegation that applicant violated the provisions of Seed Rules – Breach of provisions of Act of 1955 not attracted: *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

– Section 10 & Fertilizer (Control) Order, 1985, Clause 24 – Complaint – Held – Petitioner is a compliance officer of the Company – FIR can be lodged against him as per clause 24 of the Fertilizer (Control) Order, 1985 – Apex Court concluded that complaint can be filed against company alone, or officer-in-charge alone or against both: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

– Section 11 – See – Criminal Procedure Code, 1973, Section 482: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

– Section 11 and Fertilizer (Control) Order, 1985, Clause 24 – Complaint – Competent Person & Forum – Held – Section 11 nowhere states that complaint be made only to Court, all it says that complaint is to be made by concerned competent person – Complainant is Fertilizer Inspector who has submitted written complaint and FIR was lodged – No illegality in the procedure adopted – Application dismissed: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

EVIDENCE ACT (1 OF 1872)

– Sections 1 & 3 – See – Civil Procedure Code, 1908, Order 18 Rule 4 & Order 19 Rule 1 & 2: *Kalusingh Vs. Smt. Nirmala, I.L.R. (2016) M.P. 450*

SYNOPSIS : Section 3

1. Appreciation of Evidence

– Section 3 – Appreciation of evidence – Broad day light murder – Witness could not reply about the colour of the clothes of the culprits – It was not possible for

any witness to remember about the clothing of each and every culprit – Such minor contradictions in the deposition of witness could have been ignored: *Narendra @ Chunna Kirar Vs. State of M.P., I.L.R. (2017) M.P. 364 (DB)*

– Section 3 – Appreciation of Evidence – Though the prosecution has proved that the prosecutrix was kidnapped and was brutally raped but non-examination of material witnesses, delay in conducting the test identification parade without satisfactory explanation, material contradiction, discrepancies, omission and exaggeration creates serious doubt on the case of the prosecution – Prosecution has failed to establish the guilt of the accused beyond reasonable doubt – Conviction and sentence is not sustainable: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

– Section 3 – Witness – Appreciation of Evidence – P.W. 2 lodged F.I.R. stating that the deceased was sitting on the mudguard and fell and run over by the offending vehicle – In Court evidence witness deposed that deceased was standing by the road side – The F.I.R. was lodged within a close proximity of the accident – The version of F.I.R. is reliable – Claims Tribunal was justified on relying on F.I.R. rather on distorted version in Court: *Bablu @ Netram @ Netraj Vs. Smt. Abhilasha, I.L.R. (2016) M.P. 1138*

2. Child Witness

– Section 3 – Child Witness – Evidence of child witnesses has to be scrutinised carefully – Substantial corroboration is necessary – Evidence can not be rejected if found reliable and free from defect: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

3. Hearsay Evidence

– Section 3 – Hearsay Evidence – Held – Evidence available on record is hearsay evidence and thus no value could be attached to the same – Contents of documents or the literature or Book without examining the author are worst piece of hearsay evidence: *Swaraj Puri Vs. Abdul Jabbar, I.L.R. (2018) M.P. 2061*

4. Injured Witness

– Section 3 – Injured witness – Credibility – The statement of an injured witness carries more weight than an ordinary witness – The testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assistant in order to falsely implicate someone: *Siyadeen @ Bhakada Kol Vs. State of M.P., I.L.R. (2018) M.P. *67 (DB)*

5. Related/Interested Witness

– Section 3 – Related witness – Admissibility of evidence – Can not be discarded if it is otherwise credit worthy – Can not be discarded solely on the ground of relationship with the victim of offence: *Siyadeen @ Bhakada Kol Vs. State of M.P., I.L.R. (2018) M.P. *67 (DB)*

– Section 3 and Penal Code (45 of 1860), Section 304-B & 498-A – Testimony of Close Relatives – Interested witnesses – Consideration – Held – Close relatives of deceased are interested witnesses but their testimony cannot be disbelieved on this ground alone – In cases of demand of dowry, domestic violence or bride burning, offence takes place within four walls of the matrimonial house and it is quite obvious that deceased would have told about the conduct and behaviour of her in-laws to her parents and close relatives not to any outsiders – Testimony of near/close relatives of the deceased cannot be brushed aside: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

6. Suspicious Circumstances/Burden of Proof

– Section 3 and Succession Act, Indian (39 of 1925), Section 63 – Will – Execution – In favour of other than family members – Propounder to establish it beyond reasonable doubt and in clear terms: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

– Section 3 and Succession Act, Indian (39 of 1925), Section 63 – Will – Execution – In favour of stranger – Burden on propounder to establish as to why family members have been excluded of the benefit: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

– Section 3 and Succession Act, Indian (39 of 1925), Section 63 – Will – Suspicious circumstance – 'A' said to have identified the thumb impression of testator has neither signed the will nor he was examined: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

– Section 3 and Succession Act, Indian (39 of 1925), Section 63 – Will – Suspicious circumstance – Witness deposed in examination-in-chief that a testator signed, whereas, in cross examination he deposed that the testator had put thumb impression – Suspicious circumstance: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

7. Miscellaneous

– Section 3 – See – Criminal Procedure Code, 1973, Section 363: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

• **– Sections 3, 60, 145 & 157** – See – Penal Code, 1860, Sections 302, 325/149, 148 & 323: *Sitaram Vs. State of M.P., I.L.R. (2017) M.P. 116 (DB)*

– Sections 3 & 118 – See – Penal Code, 1860, Sections 363, 366 & 376-E: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

– Section 6 – See – Penal Code, 1860, Section 302: *Khemchand Kachhi Patel Vs. State of M.P., I.L.R. (2018) M.P. 747 (DB)*

– Section 6 – See – Penal Code, 1860, Section 376: *Ramnath Vs. State of M.P., I.L.R. (2017) M.P. 2706 (DB)*

– Section 7 – See – Penal Code, 1860, Sections 396, 398 & 412: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Sections 7, 8 & 45-A – Examination of C.D. - Expert Opinion – Election petition by respondent against petitioner – Application u/S 45-A of the Act of 1972 filed by petitioner to examine a CD which contained telephonic conversation – Application dismissed – Challenge to – Held – Election petition is regarding the caste status of petitioner whereas the conversation in CD does not throw any light on the caste status of petitioner – As per Section 7 and 8 of the Evidence Act, subsequent conduct of parties are relevant only when it is connected with the "fact in issue" – Conversation which has no nexus with the question involved in election petition cannot be a ground for appointing an expert to examine the voice and form an opinion: *Saraswati Manjhi Vs. Smt. Manju Kol, I.L.R. (2018) M.P. 1684*

– Section 9 – Identification of Accused persons – Held – Three persons who were the resident of the same village and known to the family members of deceased, were duly identified – Their names were specifically mentioned in the FIR which was promptly lodged – No doubt about the identification of accused: *Gagriya Vs. State of M.P., I.L.R. (2018) M.P. 159 (DB)*

– Section 9 – See – Penal Code, 1860, Section 376: *Aftab Khan Vs. State of M.P., I.L.R. (2018) M.P. 1194 (DB)*

– Section 9 – See – Penal Code, 1860, Section 394 & 397: *Tilak Singh Vs. State of M.P., I.L.R. (2018) M.P. *13*

– Section 9 – See – Penal Code, 1860, Sections 395, 396, 397 & 458: *Suraj Nath Vs. State of M.P., I.L.R. (2018) M.P. 1761 (DB)*

– Section 11 & 103 – Plea of Alibi – Burden of Proof – Held – Rule of plea of *alibi* is a rule of evidence recognized by Section 11 and when an accused takes the plea of *alibi*, burden to prove that plea with absolute certainty, lies on him u/S 103 of Evidence Act – Such plea has to be proved to the satisfaction of Court and should

be accompanied by strong independent and impartial evidence: *Patiram Kaithele Vs. State of M.P., I.L.R. (2019) M.P. 1899*

– Section 10 & 27 – See – Penal Code, 1860, Section 420 & 120-B: *Anupam Chouksey Vs. State of M.P., I.L.R. (2017) M.P. 2016*

– Section 25 – Confessional Police Statement – Admissibility – Held – Confessional statement of accused given to police, having any ingredients of offence or having similar effect is not admissible in evidence u/S 25 of the Act of 1872: *Shahida Sultan (Ku.) Vs. State of M.P., I.L.R. (2019) M.P. 1138*

– Section 27 – Applicability – Scope – Presumption – Held – Section 27 makes that part of the statement which is distinctly related to discovery, admissible as a whole, whether it be in the nature of confession or not – For application of Section 27, statement must be split into its components and to separate the admissible portion – Only those components or portions which were the immediate cause of discovery would be the legal evidence and the rest must be excluded and rejected – Section 27 permits the derivative use of custodial statements in ordinary course of events – There is no automatic presumption that custodial statements are extracted through compulsion: *Gyanchand Jain Vs. State of M.P., I.L.R. (2018) M.P. 1793*

– Section 27 – Confessional Statement – Facts disclosed u/S 27 of Indian Evidence Act can be used only against the persons making disclosure and not against any other persons: *Pappu Rai Vs. State of M.P., I.L.R. (2016) M.P. 2847*

– Section 27 – Discovery of Fact – Held – It is established that on basis of memorandum of appellant, clothes of deceased hidden beneath the soil and stones were recovered – This amounts to discovery of fact u/S 27 of Evidence Act: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Section 27 – Memorandum statement – Held – It is not at all mandatory to draw arrest memo prior to accused giving information u/S 27 of the Evidence Act as an accused is deemed in police custody when he gives information and recovery was made: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Section 27 – Recovery – Held – Recovery will not stand vitiated merely because the place of recovery of dead body of victim was an open place and accessible to others: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Section 27 – See – Penal Code, 1860, Section 302 & 384: *Jitendra @ Jeetu Vs. State of M.P., I.L.R. (2017) M.P. *93 (DB)*

– Section 27 and Constitution – Article 20(3) – Recovery of Incriminating Material – Confession – Held – Confessions which led to recovery of incriminating

materials were not voluntary but caused by inducement, pressure or coercion, thus is hit by Article 20(3) of Constitution – Evidentiary value of such statement is nullified: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

– Section 32 – See – Criminal Procedure Code, 1973, Section 161: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

– Section 32 – See – Criminal Procedure Code, 1973, Section 227 & 228: *Kattu Bai Vs. State of M.P., I.L.R. (2017) M.P. 3122*

– Section 32 – See – Penal Code, 1860, Section 300 Exception 4, 302/34 & 294: *Ram Sevak Vs. State of M.P., I.L.R. (2017) M.P. 1960 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302: *Pappu @ Chandra Prakash Vs. State of M.P., I.L.R. (2017) M.P. 1724 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302: *Ramanda @ Yashvant Gond Vs. State of M.P., I.L.R. (2017) M.P. 2489 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302: *Sukhdev Vs. State of M.P., I.L.R. (2017) M.P. *163 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302/34 & 449: *Kadwa Vs. State of M.P., I.L.R. (2018) M.P. *63 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302/149 & 148: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Section 32 – See – Penal Code, 1860, Sections 302, 354 & 449: *Shrawan Vs. State of M.P., I.L.R. (2018) M.P. 740 (DB)*

– Section 32 – See – Penal Code, 1860, Section 302 & 498-A: *State of M.P. Vs. Ramesh Kumar, I.L.R. (2018) M.P. 1188 (DB)*

– Section 32 and Penal Code (45 of 1860), Section 304-B & 498-A – Dying Declaration – Credibility – In the instant case, there were two dying declarations – Contents of the dying declaration are duly supported by the evidence of brother and mother of the deceased – There is no allegation against husband that he threatened and beaten the deceased – Both dying declarations are found reliable with respect to cruelty and ill treatment by mother-in-law – It shows that husband and both sister-in-law did not actively participated in the crime: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

– Section 33 – Evidence given by witness in judicial proceeding – Whether the statement recorded by the police authorities during investigation is covered u/s 33 of the Act – Held – Making the said evidence admissible in subsequent proceedings

following three conditions must be fulfilled – (1) that the earlier proceeding was between the same parties (2) that the adverse party in the first proceeding had the right and opportunity to cross-examine and (3) that the question in issue in both proceedings were substantially the same – In absence of any of three prerequisites Section 33 would not be attracted: *Parmanand Gupta Vs. Smt. Bhagwati Devi, I.L.R. (2016) M.P. 752*

– Sections 35, 63, 65 & 76 and Bankers' Books Evidence Act (18 of 1891) – Certified copies whether given under Section 76 of Evidence Act or under the provisions of Right to Information Act can only be admitted in evidence without examining the author of the documents and without comparing them with the original – For rest of the documents which are not public documents the original should be called before Court and the persons in whose possession such documents are kept should be called for evidence: *Antar Singh Darbar Vs. Shri Kailash Vijayvargiya, I.L.R. (2016) M.P. 1986*

– Section 44 – See – Civil Procedure Code, 1908, Order 32 Rule 3(A): *Chironji Bai Vs. Narayan Singh, I.L.R. (2017) M.P. 1135*

– Section 45 – Medico Legal Case (MLC) – Competent Authority – Held – There is no criteria of doing MLC either by a government doctor or by a private doctor – MLC can be done by a person having special knowledge in the specific field – If any MLC is done by a specially skilled person following the prescribed procedure, it shall be considered as MLC: *Mala @ Gunmala Lodhi (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2160*

– Section 45 – Report of Handwriting Expert in Rebuttal – Right of Parties – Held – Trial Court cannot take away the right of the petitioner/defendant to produce the report of handwriting expert in rebuttal of the report of handwriting expert filed by respondent No.1/plaintiff – Impugned order set aside – Petition allowed: *Nandu @ Gandharva Singh Vs. Ratiram Yadav, I.L.R. (2019) M.P. *41*

– Section 45 – See – Hindu Marriage Act, 1955, Section 13: *Jitendra Singh Kaurav Vs. Smt. Rajkumari Kaurav, I.L.R. (2019) M.P. 1251*

– Section 45 – See – Negotiable Instruments Act, 1881, Section 138: *Sadhna Pandey (Smt.) Vs. P.C. Jain, I.L.R. (2016) M.P. 865*

– Section 45 – See – Negotiable Instruments Act, 1881, Section 138: *Sohanlal Singhal Vs. Sunil Jain, I.L.R. (2016) M.P. 277*

– Section 45 – See – Negotiable Instruments Act, 1881, Section 138 & 139: *Ragini Gupta (Smt.) Vs. Piyush Dutt Sharma, I.L.R. (2019) M.P. 2362*

– Section 45 & 73 – Examination of Signature by Expert – Suit for specific performance of contract – Held – When signature was denied by defendants, it was the duty of appellant/plaintiff to file application u/S 45 for expert examination of disputed signatures with the admitted one – Application was not filed deliberately and even no explanation was forwarded for the same – Court rightly did not take the task to compare the signatures on its own – Impugned Judgment affirmed – Appeal dismissed: *Raja Bhaiya Vs. Badal Singh, I.L.R. (2020) M.P. 935*

– Section 45 & 73 – See – Penal Code, 1860, Section 420: *Satyanarayan Vs. State of M.P., I.L.R. (2016) M.P. 2830*

– Section 58 – Admission – Held – Facts admitted need not be proved but proviso to Section 58 gives full discretion to Court to require the admitted facts to be proved otherwise than by such admission: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 62, Explanation-1 – Primary Evidence – Held – Where a document is executed in several parts, each part is a primary evidence of the document – Original document, as well as carbon copies are prepared together and thus both are primary evidence: *Nathulal (Deceased) Through L.R. Kailashchandra Vs. Ramesh, I.L.R. (2019) M.P. 2015*

– Section 63 – Secondary Evidence – Held – One has to establish that the photocopy is of a document which actually existed – There must be sufficient proof of the search for the original to render secondary evidence admissible: *Narsingh Vs. Shripat Singh, I.L.R. (2016) M.P. 414*

– Section 63 & 65 and Right to Information Act (22 of 2005), Section 2(j) – Whether certified copy of documents obtained under RTI Act 2005 can be admitted as secondary evidence under the Evidence Act, 1872 – Held – Yes, Section 65(f) of Evidence Act makes it clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence & RTI Act falls within the ambit of "by any other law in force in India", and the definition of "Right to Information" under the RTI Act includes certified copies of documents – Impugned order upheld – Documents obtained under the RTI Act are not true copies or attested copies – No need to compare with the original – Petition dismissed: *Narayan Singh Vs. Kallaram @ Kalluram Kushwaha, I.L.R. (2016) M.P. *6*

– Section 65 – Secondary evidence – Agreement II – Whether bipartite or tripartite – Concession made by counsel before High Court that it is bipartite – Whether such a concession can be regarded as a secondary evidence or not – Held – Such concession is not secondary evidence admissible under any of the clauses of Section 65 of Evidence Act and it does not preclude respondent from asserting that Agreement

II is a tripartite agreement: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

– Section 65 – See – Civil Procedure Code, 1908, Order 41 Rule 27: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

– Section 65 & 65-B – Secondary Evidence – Requirement – Admissibility in Evidence – Supreme Court has held that if statement is relevant to the matter in issue, an accurate tape record of statement is admissible in evidence, however the time, place, and accuracy of recording must be proved by competent witness and voices must be properly identified as there is possibility of erasing and reusing the same – In the instant case, certificates issued by witnesses regarding tape and CD are not in conformity with provisions of Sections 65-B(2) and 65-B(4) of Evidence Act and hence are not admissible in evidence: *Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma, I.L.R. (2018) M.P. 1472*

– Section 65 & 65(b) – Secondary Evidence – Suit for specific performance of contract and permanent injunction filed by petitioner/plaintiff – He filed an application u/S 65 of the Act of 1872 to admit the photocopy of agreement as 'Secondary Evidence' – Application dismissed – Challenge to – Held – Plaintiff in his pleadings has not stated that original copy of the agreement has been destroyed or lost – Suit was filed in 2010 and aforesaid application was filed in 2017 after about 7 years and during this period there is no whisper about the possession of original copy of agreement - In such circumstances, permission to adduce evidence through secondary evidence is not available – Further held – Section 65(b) of the Act of 1872 requires that if the existence and conditions or contents of the original is admitted then only the secondary evidence can be adduced – In the present case, possession of the agreement with respondent is not admitted by the respondent – No interference is warranted – Petition dismissed: *Sanjay Sahgal Vs. Shradha Kashikar, I.L.R. (2018) M.P. 924*

– Section 65 & 66 – Secondary Evidence– Admissibility – Petition against dismissal of application filed by petitioner/plaintiff seeking to file photocopy of the lease agreement as secondary evidence with the plea that original is with the defendant – Held – When a photocopy of document is produced, then in order to get benefit of Section 65, party is required to explain the circumstances under which the photocopy was prepared and who was in possession of the original at the time of preparing the same – Secondary evidence must be authenticated by foundational evidence that copy sought to be produced is infact the true copy of the original – Further held, permitting a party to lead secondary evidence is an exception and not the rule – In the present case, the photocopy of the lease agreement is neither the certified copy nor they are the copies prepared from original by mechanical process and compared with

the original which ensures the accuracy of document – No factual foundation was laid by the petitioner/ plaintiff in respect of preparation of photocopy from original – No error committed by trial Court – Petition dismissed: *Makhanlal Vs. Balaram, I.L.R. (2018) M.P. 94*

– Section 65 & 66 – Secondary Evidence – Prosecution filed photo copies of enquiry report and certain other documents along with charge sheet – Permission was sought to lead secondary evidence on the ground that the person who had prepared the enquiry report had kept the original with him and now he has expired – As prosecution has sought permission to lead secondary evidence on the ground that original is lost and therefore, the phrase " for any other reason not arising from his own default or neglect" is not applicable – Therefore, order granting blanket permission to lead secondary evidence is set aside – Prosecution shall be free to tender secondary evidence of relevant documents – Defence shall be free to take objection as to the relevance or admissibility to each document – Revision partly allowed: *Damodar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1814*

– Section 65A & 65B – Electronic Document – C.D. was prepared from the Memory Chip of a Mobile Phone – Therefore, it was an electronic record, which was secondary in nature and is admissible in evidence – The copy was prepared from the original Memory Chip, which was an electronic device, and therefore, such C.D. is admissible u/S 65 B of Evidence Act: *Jagdish @ Nagina Vs. State of M.P., I.L.R. (2016) M.P. *27*

– Section 65-B – Election petition – Electronic record – In cases of CD, VCD, Chip etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the documents, without which, the secondary evidence pertaining to that electronic record, is inadmissible: *Kamal Patel Vs. Shri Ram Kishore Dogne, I.L.R. (2016) M.P. 1719*

– Section 65-B – Electronic Evidence – Admissibility – In the present case, call statements of mobile and the landline data produced were duly certified by the office of concerned Telecom department – There is a compliance of Section 65-B of the Evidence Act – Athar Ali failed to discharge the burden which was shifted on him in the form of electronics and documentary evidence, which established that call for ransom was made by Athar Ali: *Laxmi Verma (Smt.) Vs. Sharik Khan, I.L.R. (2017) M.P. 1978 (DB)*

– Section 65-B – Electronic Evidence – Admissibility – Requirement of Certificate – Proof of Phone Calls – Held – Supreme Court has held that in respect of admissibility of electronic evidence, especially by a party who is not in possession of the device from which document is produced, party is not required to produce

certificate u/S 65-B(4) of Evidence Act – Requirement of Certificate being procedural can be relaxed by Court wherever interest of justice so justifies: *Shabbir Sheikh Vs. State of M.P., I.L.R. (2018) M.P. 1712 (DB)*

– Section 65-B – Electronic Records – Certificate – Admissibility – In compliance of the order passed by this Court, enquiry conducted and report submitted to Commissioner alongwith CD, which was later produced before this Court – Held – CD produced was a copy of original CD prepared by Constable in a computer shop run by a person who reportedly expired – Held – The said constable was posted at the relevant place of Vidhan Sabha elections and was having knowledge of all the circumstances under which the copy was prepared and therefore he appears to be the proper person to issue the certificate in this regard – Notice issued to Constable directing him to issue a certificate and to appear before the Court for evidence to prove the certificate: *Antar Singh Darbar Vs. Kailash Vijayvargiya, I.L.R. (2017) M.P. 1694*

– Section 65-B – Evidentiary Value – Prosecution has not attached a certificate of authenticity and correctness of transcriptions of conversations recorded in cassettes in terms of Section 65(b) of the Evidence Act – When the cassettes were played at the time of complainant's evidence for identification of voice of accused, the voices were inaudible – Transcription has no evidentiary value to support complainant's statement: *Archana Nagar (Ku.) Vs. State of M.P., I.L.R. (2017) M.P. 1162 (DB)*

– Section 68 and Indian Succession Act (39 of 1925), Section 63 (c) – Will – Attestation – Proof of Validity – Held – As per Section 63(c) of the Act of 1925, 'Will' shall be attested by two or more witnesses and as per Section 68 of the Act of 1872, to prove the factum of execution of 'Will', it has to be proved atleast by one of the attesting witnesses – In the present case, Will was attested by two witnesses and was duly proved by one of the attesting witnesses before the Court – No ground to discard the 'Will' as shrouded by suspicion: *Visnushankar (Since dead) Vs. Girdharilal, I.L.R. (2018) M.P. 1174*

– Sections 68, 69 & 90, Transfer of Property Act (4 of 1882), Section 54 and Land Revenue Code, M.P. (20 of 1959), Section 117 – 30 years Old Document – Presumption – Sale Deed is more than 30 years old and executants of the same and its attesting witnesses are not alive – Principle of section 90 Evidence Act is that if a document, 30 years old or more is produced from proper custody and is on its face free from suspicion, Court may presume that it has been duly executed and attested but at the same time it is not mandatory to draw such presumption, discretion is left with the Court to raise presumption – Further held – Section 54 of the Act of 1954 does not contemplate the requirement of attestation of sale deed, therefore in the

present case, compliance of section 68 and 69 Evidence Act is not mandatory – Revenue records (Mutation and Khasra Panchsala) also proves that defendants after purchasing the property was in continuous possession of the same – Presumption of possession u/S 117 of the Code of 1959 can also raised in favour of defendants – Appellant/plaintiff failed to prove his title over the disputed property – No illegality in the impugned judgment – Appeal dismissed: *Ramcharan Vs. Damodar, I.L.R. (2017) M.P. 1882*

– Section 90 – 30 years Old Document – Presumption – Held – When a document is or purports to be more than 30 years old, if it be produced from proper custody, it may be presumed that signature and every other part of such document which purports to be in handwriting of any particular person, is in the person's handwriting and that it was duly executed and attested by the person by whom it purposes to be executed and attested – It is not necessary that signatures of attesting witnesses or of the scribe be proved – In the instant case, 30 yrs old documents produced from custody of authorities who in their official capacity keep the record, they are as good as public documents – Such document can be read as evidence: *Shri Banke Bihariji Bazar Vs. State of M.P., I.L.R. (2017) M.P. 2205*

– Section 90 – Presumption – 30 years old Document – Held – Section 90 enables the court to draw presumption about genuineness of document which is 30 years old – Mere allegations of fraud is not sufficient to rebut it – Respondent/plaintiff has not controverted the said presumption – No document produced by plaintiff to prove the said document to be a forged one: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 90 – Presumption – Validity of Document – Held – Original sale deed never produced before Court – Sale deed produced before Court although 30 yrs. old is actually a certified copy – Even original defendant/purchaser neither got his name mutated in revenue records nor was examined before Court, thus cannot be said to be a valid sale deed – Conditions enumerated u/S 90 of the Act of 1872 not satisfied thus presumption to validity of such document not available – Appeal dismissed: *Dhiraj Jaggi Vs. Smt. Chuntibai, I.L.R. (2019) M.P. 164*

– Section 90, Illustration-A – Thirty Years Old Document – Presumption – Held – Patta document is 30 years old, presumption can be drawn u/S 90 of the Evidence Act regarding its genuineness because it is produced from proper custody and its execution is established by witnesses – Sardar Kanungoo report of 1943 also shows possession of plaintiff's predecessors – No cross appeal or cross objection by appellant/defendant – No interference called for – Appeal dismissed: *Pramod Kumar Jain Vs. Smt. Kushum Lashkari, I.L.R. (2020) M.P. 163*

– Section 91 – See – Specific Relief Act, 1963, Section 34: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 101 – Burden of proof – Medical Certificate can be proved either by medical practitioner or by person who suffered from disease and consulted doctor and if certificates were alleged to be forged one, then the burden lies on the person who alleges forgery: *Shantilal (Dr.) Vs. Modiram, I.L.R. (2016) M.P. *44*

– Sections 101, 102 & 103 – Burden of Proof & Onus of Proof – Difference – Held – Burden of proof and onus of proof are two different aspects – Burden of proof never shifts but onus of proof keeps on shifting, subject to evaluation of evidence – In the instant case, onus of proof that appellant signed sale agreement, was discharged by respondent/ plaintiff therefore onus of proof shifted to appellant to prove that the same was not signed by him – He could have filed application for getting his signatures verified/examined from a hand writing expert, which was not done by him: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Section 103 – Burden of proof – Where it is a admitted fact that the applicant resided with the respondent for 15 years as a wife, it shall be presumed that pleadings and statements of the applicant are acceptable and the marriage of the applicant took place with the respondent by following the various rituals and procedure as prescribed in the Hindu Marriage Act: *Sukhvati Bai (Smt.) Vs. Manphool Narvariya, I.L.R. (2016) M.P. 287*

– Section 105 – See – Penal Code, 1860, Section 302 & 84: *Ramcharan Yadav Vs. State of M.P., I.L.R. (2017) M.P. *108 (DB)*

– Section 106 – Burden of Proof – Held – As per Section 106 of the Act of 1872, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him: *Chhuttan Kori Vs. State of M.P., I.L.R. (2019) M.P. 918 (DB)*

– Section 106 – Burden of Proof – Held – Fact which is specially within knowledge of any person, burden of proving that fact is upon him/them – Burden to establish those facts is on the person concerned and if he fails to establish or explain those facts, an adverse inference of fact may arise against him and it becomes an additional link in the chain of circumstances to make it complete: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 106 – Burden of Proof – Held – It is established that deceased were killed inside their house – As per statement of witnesses and neighbours, accused was seen quarreling with deceased prior to incident – Onus was upon accused u/S 106 of Evidence Act to explain how both ladies were killed: *Shaitanbai Vs. State of M.P., I.L.R. (2020) M.P. 1720 (DB)*

– Section 106 – Burden of Proof – Presumption – Held – On date of incident, deceased residing with husband (appellant) and children – As per Section 106 of the Act of 1872, burden shifts on appellant to prove how such injuries have been caused to his wife in his presence at his own house – Appellant failed to put any explanation thus adverse inference can be drawn against him and it can easily be presumed that appellant is guilty for causing death of his wife: *Munna @ Manshalal Vs. State of M.P., I.L.R. (2019) M.P. 1149 (DB)*

– Section 106 – Burden of proving fact especially within the knowledge – Section 106 – When certain facts are "especially" within the knowledge of any person, burden of proving that fact is upon him: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Section 106 – Onus of Proof – Held – Onus u/S 106 of Evidence Act was not discharged by accused who needed to explain the whereabouts of deceased whom he had accompanied at the relevant period: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Section 106 – See – Penal Code 1860, Section 302: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

– Section 106 – See – Penal Code, 1860, Section 302: *Narayan Singh Vs. State of M.P., I.L.R. (2018) M.P. *53 (DB)*

– Section 106 – See – Penal Code, 1860, Sections 302, 364-A, 201 & 120-B: *In Reference Vs. Rajesh @ Rakesh, I.L.R. (2017) M.P. 2826 (DB)*

– Section 106 – See – Penal Code, 1860, Sections 489-B, 489-C & 120-B: *Shabbir Sheikh Vs. State of M.P., I.L.R. (2018) M.P. 1712 (DB)*

– Section 112 – Paternity of Child – Presumption – DNA Test – Supreme Court has concluded that one cannot be compelled to bear fatherhood of a child who is scientifically not his child and asked to maintain him/her: *Sandhya Gupta (Smt.) Vs. Lakhendra Gupta, I.L.R. (2018) M.P. 2440*

– Section 112 – See – Criminal Procedure Code, 1973, Section 125: *Badri Prasad Jharia Vs. Ku. Vatsalya Jharia, I.L.R. (2020) M.P. 1755*

– Section 112 and Hindu Marriage Act (25 of 1955), Section 12(1)(d) – Paternity of Child – Presumption – DNA Test – Husband filed application for DNA test of himself and the child which was allowed – Challenge to – Held – Marriage was solemnized on 31.01.2016 – Wife gave birth to a baby girl on 16.09.2016, i.e. after 7 months and eight days – In ultrasound examination on 23.06.2016, wife was found pregnant of about 25 weeks whereas wife herself mentioned that her last menses

was on 15.02.2016 – Trial Court rightly directed to conduct DNA test – Petition dismissed: *Sandhya Gupta (Smt.) Vs. Lakhendra Gupta, I.L.R. (2018) M.P. 2440*

– Section 112 & 114 – See – Constitution – Article 227: *Badri Prasad Jharia Vs. Smt. Seeta Jharia, I.L.R. (2017) M.P. 1824*

– Section 113 – See – Criminal Procedure Code, 1973, Section 211: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Section 113-A & 113-B – Presumption – Burden of Proof – Held – Apex Court concluded that Section 113-A confers a discretion on a Court to draw presumption in case of suicide whereas Section 113-B mandatorily requires the Court to draw an adverse inference presuming guilt of accused in a case of dowry death – Once initial burden is discharged by prosecution, deemed presumption arises – Burden/onus would then be shifted on accused to rebut that deemed presumption of guilt to prove his innocence: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 113-B – Presumption – Held – Specific admission of witnesses that marriage took place about 8-10 years prior to date of incident – No presumption u/S 113-B of the Act of 1872 can be drawn: *Liyakatuddin Vs. State of M.P., I.L.R. (2018) M.P. 2927*

– Section 113-B – Presumption – Requires – Existence of proximate and live link between the effect of cruelty based on dowry demand and concerned death, and, reasonable time gap between cruelty inflicted and death in question: *State of M.P. Vs. Ramkishan, I.L.R. (2016) M.P. 541 (DB)*

– Section 113-B – See – Penal Code, 1860, Section 304-B: *Surendra Singh Vs. State of M.P., I.L.R. (2018) M.P. 2263*

– Section 113-B – See – Penal Code, 1860, Section 304-B/34 & 498-A: *Suresh Kumar Vs. State of M.P., I.L.R. (2017) M.P. 902*

– Section 113-B – See – Penal Code, 1860, Section 304-B & 498-A: *State of M.P. Vs. Mukesh Kewat, I.L.R. (2019) M.P. 489 (DB)*

– Section 113-B – See – Penal Code, 1860, Sections 304-B & 498-A: *State of M.P. Vs. Ramkishan, I.L.R. (2016) M.P. 541 (DB)*

– Section 113-B – See – Penal Code, 1860, Sections 498-A, 304-B/302 & 306: *Gourishankar Nema Vs. Prabhudayal Nema, I.L.R. (2017) M.P. 765 (DB)*

– Section 113-B and Penal Code (45 of 1860), Section 304-B – Presumption – Held – It is now well settled and is also evident from bare reading of Section 113-B of Evidence Act, that the statutory presumption u/S 113-B arises only when basic

three ingredients of Section 304-B IPC are *prima facie* made out and not otherwise: *Megha Singh Sindhe (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1017*

– Section 114 – Presumption – Applicant resided with the respondent for 15 years as a wife – It shall be presumed that the applicant was the wife of the respondent: *Sukhvati Bai (Smt.) Vs. Manphool Narvariya, I.L.R. (2016) M.P. 287*

– Section 114 – Presumption of Marriage – Applicant was living with the deceased as husband and wife since more than last 20 years – Deceased always treated her as his wife and also constructed a house for her – They have 3 children from such relationship – A presumption of marriage can be raised in favour of the applicant: *Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Devi, I.L.R. (2017) M.P. 1211*

– Section 114 – See – Civil Procedure Code, 1908, Order 41 Rule 27: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Section 114 – See – Criminal Procedure Code, 1973, Section 125(4): *Sukhdev Pakharwal Vs. Smt. Rekha Okhle, I.L.R. (2018) M.P. 1571*

– Section 114 – See – Penal Code, 1860, Section 379 & 411: *Deepak Ludele Vs. State of M.P., I.L.R. (2020) M.P. 518*

– Section 114 & 120 and Civil Procedure Code (5 of 1908), Order 18 Rule 4 – Presumption & Adverse Inference – Held – If party abstains from entering witness box, it would give rise to an inference adverse against him and presumption u/S 114 of Evidence Act would go against him – When material documents like sale deeds of same property having different outer boundaries and there is omission of survey number, it was the duty of plaintiff to enter into witness box – Further, husband of plaintiff, as a power of attorney holder, in his affidavit under Order 18 Rule 4 should have stated that he is giving statement on behalf of plaintiff, not as a plaintiff's witness but as plaintiff himself but the same was not done: *Sarita Sharma (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 2307*

– Section 114-A – See – Penal Code, 1860, Section 376(2)(g): *Dhanraj Singh Vs. State of M.P., I.L.R. (2017) M.P. *134*

– Section 114-A – See – Penal Code, 1860, Section 411 & 412: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 114(e) – See – Motor Vehicles Rules, M.P. 1994, Rule 8-A: *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Section 114(g) – See – Accommodation Control Act, M.P., 1961, Section 12(1)(i): *Kastur Chand Jain (Since Dead) Through LR Ashish Jain Vs. Keshri Singh, I.L.R. (2019) M.P. 2319*

– Section 114(g) – See – Civil Procedure Code, 1908, Order 12 Rule 3: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 115 – See – Specific Relief Act, 1963, Section 28: *Gitabai Vs. Sunil Kumar, I.L.R. (2018) M.P. 1235*

– Section 118 – Child Witness – Precautions – Held – Court below asked certain questions to examine reliability of child witness as per requirement of Section 118 of the Act of 1872 – Court rightly recorded its satisfaction that child witness is able to understand the question and gave answer thereto – Necessary precaution was taken by Court below: *Sunder Lal Mehra Vs. State of M.P., I.L.R. (2019) M.P. 903 (DB)*

– Section 134 – Hostile Witness – Held – In the instant case, some witnesses turned hostile but it is not proper to reject the whole prosecution case on that ground – Section 134 of Evidence Act requires no particular number of witnesses to prove the case – Conviction can be based on sole testimony of reliable witness: *Sangram Vs. State of M.P., I.L.R. (2017) M.P. 2243*

– Section 134 – See – Penal Code, 1860, Section 302 & 324: *Ashish @ Banti Sen Vs. State of M.P., I.L.R. (2018) M.P. *40 (DB)*

– Section 134 – See – Prevention of Food Adulteration Act, 1954, Sections 13(2), 16(1)(A)(i) & 20(1): *Manohar Vs. State of M.P., I.L.R. (2017) M.P. 2000*

– Section 142 & 154 – See – Criminal Procedure Code, 1973, Section 363: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

– Section 145 – Omission or Improvement in Statement – Held – In present case, none of prosecution witnesses was confronted with their previous statements as required u/S 145 of the Act of 1872 – It is settled principle of law that if witness is not confronted with his previous statement, then improvement or omission and the previous statement cannot be taken into consideration: *Sardar Singh Vs. State of M.P., I.L.R. (2018) M.P. 2270*

– Section 145 – See – Criminal Procedure Code, 1973, Sections 162 & 174: *Mamta Vs. State of M.P., I.L.R. (2016) M.P. 2103*

– Section 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 161 – Held – Fact of insanity not mentioned in FIR and case diary statements but witnesses were not confronted with their previous statements u/S 145 of the Act of 1872 and even they were not declared hostile on the question of insanity – Ground taken by prosecution cannot be considered: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Section 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – To take advantage of omission in previous statement, attention of witness has to be drawn to it, giving opportunity to explain omission – Witness was not confronted with omission with regard to last seen together – Evidence cannot be discarded: *Bhagwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 564 (DB)*

– Section 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 311 – Recall of Witness – Confrontation – Held – Confrontation of prosecution witness with the relevant portion of her earlier statement u/S 161 Cr.P.C. is essential u/S 145 of the Evidence Act in order to discredit her statement in Court, which was not done in present case – Further, law of evidence does not provide for any procedure whereby court statement of one witness can be put forth to another either to seek a corroboration or a contradiction: *Laxminarayan Agrawal Vs. State of M.P., I.L.R. (2019) M.P. 494*

– Section 154 – Hostile Witness – Testimony – Effect – Held – In the present case, Mesobai, neighbour of the deceased turned hostile but she partly supported the prosecution story, hence that part of her evidence can be relied upon her corroboration: *Shrawan Vs. State of M.P., I.L.R. (2018) M.P. 740 (DB)*

– Section 155 and Motor Vehicles Act (59 of 1988), Section 166 r/w 140 – Standard of Proof – Witnesses – Held – Apex Court concluded that standard of proof to be adopted in claim cases must be preponderance of probabilities and not the strict standard of proof beyond all reasonable doubt as followed in criminal cases – Evidence led in another criminal case is not relevant for Tribunal to adjudicate the lis pending before it – Tribunal rightly rejected application u/S 155 of Evidence Act – Petition dismissed: *Anshul Mandil Vs. Smt. Sushila Kohli (Dead) Through LRs., I.L.R. (2019) M.P. *65*

– Section 164 – See – Civil Procedure Code, 1908, Order 7 Rule 14(3): *Sudheer Jain (Dr.) Vs. Sunil Modi, I.L.R. (2019) M.P. *61*

EXAMINATION

– Cancelling the examination – No opportunity of hearing was given to the candidates who had appeared in the examination – Held – Paper was sold for a premium of Rs. 6 to 20 lakhs by the examiner/moderators – STF registered a crime in respect of same examination – Later on, based upon the material available, Public Service Commission cancelled the entire examination in order to maintain the sanctity of the examination and also in order to give further chance to the candidates who have participated in the earlier examination – Question of grant of opportunity of hearing does not arise – No illegality in the decision making process followed by Public Service Commission – Decision of the Public Service Commission does not

warrant any interference – Public Service Commission is free to proceed with the process of selection by holding a fresh examination: *Ashish Gupta (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 443*

– Unfair Means – Police Constable Recruitment Test 2012 – Show Cause Notice – Maintainability – Petitioners' selection was cancelled by the M.P. Professional Examination Board on the ground that illegalities in the said examination have led to registration of Crime by STF Bhopal – Cancellation was challenged in earlier Writ Petition whereby cancellation order was quashed and liberty was granted to Board to proceed on its own merits – Accordingly show cause notices were issued to petitioners – Challenge to – Held – It is well settled that any adverse order could be passed only after complying with principles of natural justice – Show cause notices were issued in terms of the liberty granted by this Court – Petitioners should submit reply as they may consider appropriate but they cannot be permitted to challenge the show cause notices in writ petition without submitting the reply – Petition dismissed: *Sanjay Malveeya Vs. State of M.P., I.L.R. (2018) M.P. 1095 (DB)*

EXAMINATION RULES

– Rule 69.1(ii) & 69.2(i) – Correction of Name in Mark Sheet – Limitation – Held – Petitioner applied to C.B.S.E. for correction of a mistake done by the Board and not for any correction in the name for which limitation follows – Student never directly applies to the C.B.S.E. for appearing in examination – C.B.S.E. receives information about candidates from concerned school – Petitioner was not at fault as he correctly submitted all the documents to concerned school – Board wrongly applied provision of Rule 69.1(ii) – Impugned order set aside – C.B.S.E. directed to issue fresh mark sheet with correct name: *Sandeep Waskale Vs. Central Board of Secondary Education, I.L.R. (2018) M.P. 2827*

EXAMINATION RULES, 2012

– Rule 1.8 & 1.9 – PEPT (M.P.) Examinations – Unfair Means – Held – Rules do not restrict use of two different pens in the answer sheets – Candidate may carry more than one pen in the examination hall and is permitted to use them while giving answers – Use of two or three pens in the answer sheet or just because shades of two pens are different, the same would not fall in the category of Unfair Means – Order cancelling the results is quashed – Writ Petitions allowed: *Vikalp Nayak Vs. State of M.P., I.L.R. (2017) M.P. *64 (DB)*

EXCISE ACT, M.P. (2 OF 1915)

– Section 18 – See – Constitution – Article 299(1): *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 28(2) – Words "may require"/"Shall require" – Interpretation – Held – Words "may require" operates not only for short lifting of quantity but it applies to penalty as well and does not take away the right of parties to meet the said condition if it occurs during course of business – Provision has to be read as a whole and not in isolation – When language is unambiguous, clear and plain, Court should construe it in ordinary sense and give effect to it irrespective of its consequences: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 31 – Granting of licence – Welfare State – Welfare State as the owner of the public property has no such freedom while disposing of the public property – All its attempt must be to obtain the best available price while disposing of its property because greater the revenue, the welfare activity will get a fillip and shot in the arm – The bid of the respondent no. 5 did not represent the market price, viewed from all angle – Held – Licence granted in favour of the respondent no. 5 quashed: *Bhupendra Singh Dawar Vs. State of M.P., I.L.R. (2016) M.P. 2187 (DB)*

– Section 31 & 31(1)(1-A) – Cancellation of Licence – Petitioner failed to deposit the dues, therefore, his licence was cancelled – Before cancelling the licence an opportunity of hearing should be given – No sufficient opportunity was given to the petitioner before cancelling his licence – Order of cancelling licence quashed: *Bhupendra Singh Dawar Vs. State of M.P., I.L.R. (2016) M.P. 2187 (DB)*

– Section 31(1) – Petitioners are challenging the re-auction notification – Whereby group license for the foreign liquor and the country liquor originally allotted to the petitioners had been put for their auction due to non payment of dues by the licensee and fresh allotment has been made in favour of the private respondent – There was a breach of contract on the part of the petitioner by not depositing the monthly license fee and basic license fee on time as provided in contract – Therefore the license is liable to be cancelled as per Section 31(1) of MP Excise Act, 1915 – Writ Petition dismissed – The petitioner shall at liberty to seek its remedies against the respondent for breach of contract: *Rajesh Malviya Vs. Commercial Taxes Department (Excise), I.L.R. (2017) M.P. 289 (DB)*

– Section 34-A – See – Criminal Procedure Code, 1973, Section 482: *Pappu Rai Vs. State of M.P., I.L.R. (2016) M.P. 2847*

– Sections 34(1), 61(1) & (2) – Limitation for Prosecution – Special Sanction – Quashment – On 18.10.2011, offence registered against petitioners u/S 34(1) of the Act of 1915 and on 11.10.2012 challan was filed and accordingly Court took cognizance – Petitioner filed preliminary objection u/S 61(2) of the Act which was dismissed – Challenge to – Held – As per Section 61(1) and (2) of the Act of 1915, prosecution must be instituted within a period of six months from the date on which offence is

alleged to have been committed or after the said period with the special sanction of State Government otherwise no Judicial Magistrate shall take cognizance as the same is not permissible under the Act – Such compliance is mandatory – Criminal Case pending against petitioners is quashed – Application allowed: *Ramesh Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *109*

– Section 34(1)(a) & 34(2) – Analysis of Seized Liquor – Method & Procedure – Held – When sealed bottles of liquor are seized which carry description of ingredients alongwith batch number, serial number, lot number etc., then it is not necessary to examine ingredients of each and every bottle and not even necessary to subject a substantial portion of seized liquor for analysis – Even one bottle of each kind of liquor can be adequate for analysis – No ground to interfere concurrent findings of Courts below regarding seizure – Conviction affirmed – Revision dismissed: *Jaisingh Vs. State of M.P., I.L.R. (2019) M.P. 1163*

– Section 34(1)(a) & 34(2) – Analysis Report – Expert – Held – Report of Excise Sub-Inspector stated that seized liquor was subjected to physical test which included smelling of liquor and tasting the same alongwith litmus paper test – Seized liquor was also subjected thermometer and hydrometer test – Excise Sub-Inspector was liable to be considered as an expert having adequate experience in distinguishing such liquor: *Jaisingh Vs. State of M.P., I.L.R. (2019) M.P. 1163*

– Section 34(1)(a) & 34(2) – Commissioner (Excise) issued instructions to affix hologram on all duty paid bottles – Required hologram were not affixed on the cartons containing bottles of liquor – No provision of law or rules where liability is placed on licensee – Instruction issued by Commissioner (Excise) is merely executive instruction – Criminal proceedings can be initiated only if it is found that liquor is not duty paid – Mere omission to affix hologram is not punishable – Proceeding against applicant quashed: *P.V. Muralidharan Vs. State of M.P., I.L.R. (2016) M.P. 596*

– Sections 34(1)(a), 34(2), 47-A(3) & 47-D – See – Criminal Procedure Code, 1973, Section 457: *Prakash Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 2782*

– Section 34(2) – See – Criminal Procedure Code, 1973, Section 437(6): *Ishwar Prasad Vs. State of M.P., I.L.R. (2017) M.P. 1756*

– Sections 34(2), 44 & 61 – See – Criminal Procedure Code, 1973, Section 482: *Dinesh Vs. State of M.P., I.L.R. (2017) M.P. 1544*

– Section 47-A & 47-D – See – Criminal Procedure Code, 1973, Section 457: *Gangaram Patel Vs. State of M.P., I.L.R. (2019) M.P. *23*

– Section 47-A(2) – Interim Custody of Vehicle – Alternate Remedy – Held – As an alternate remedy, applicant may easily and legally redress his grievance for interim custody of vehicle by approaching Collector before whom proceedings for confiscation is pending: *Anil Dhakad Vs. State of M.P., I.L.R. (2018) M.P. 1835*

– Section 47-A(3)(a) & 47-D – Confiscation Proceedings – Intimation – Jurisdiction to Release Vehicle – Held – Jurisdiction of Trial Court to make any order about custody of conveyance is ousted only after it receives intimation u/S 47-A(3)(a) of the Act of 1915 regarding initiation of confiscation proceedings – Cut-off point for jurisdiction is not commencement of confiscation proceedings but intimation thereof received by Magistrate: *Prakash Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 2782*

– Section 47-D – See – Criminal Procedure Code, 1973, Section 451 & 457: *Anil Dhakad Vs. State of M.P., I.L.R. (2018) M.P. 1835*

– Section 61(1) & (2) – See – Criminal Practice: *Ramesh Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *109*

– Section 62 and Disaster Management Act (53 of 2005), Section 6(2)(i) & 10(2)(i) – Liquor Trade – Covid-19 Pandemic – Excise Policy 2020-21 – Validity of Amendment – Held – Framing of policies is within the domain of employer – Court cannot direct to frame a policy which suits a particular person the most – State has power to amend policy as per Section 62 of Excise Act – Amendment to Excise Policy 2020-21 has been necessitated due to subsequent events occurred due to Covid-19 pandemic following lockdown – Further, State, considering practical difficulties of petitioners granted several concessions for their benefit – Amended policy does not amount to counteroffer: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– Section 62 and Foreign Liquor Rules, M.P., 1996 – Rule 8(1) (aa-2) – Amendment as to – Contention of Petitioner – Amendment in Rules brought about by an executive order without getting it legislated – Held – As per Section 62 of the Act of 1915, the State Government is empowered to formulate Rule and following a legislative process for amendment is not necessary as the Rule is only a regulatory measure for the purpose of collection, possession, supply & storage of intoxicants – Contention turned down: *Pradeep Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. *23 (DB)*

– Section 62 and Foreign Liquor Rules, M.P., 1996 – Rule 8(1) (aa-2) – Amendment thereof – Prohibiting sale of "Draught Beer" in loose form through retail shops and permitting sale in "Sealed Bottles" only to petitioner holding license of category F.L.1. A A A A – Contention – Permitting other license holders like F.L.3, F.L. 4, F.L. 5 etc. is discriminatory – Held – The license granted under F.L. 3 and

F.L. 3A is to a Hotel Bar & Resort Bar, similarly, F.L. 4 is granted to a civilian club etc., so these licenses are entirely different in purpose, conditions etc. – No case of discrimination – Contention turned down: *Pradeep Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. *23 (DB)*

– Section 62 and Foreign Liquor Rules, M.P., 1996 – Rule 8(1) (aa-2) – Petitioners are licensees, holding Foreign Liquor License – Amendment made in Rule 8(1) (aa-2) of the Rules of 1996 whereby the words "in Sealed Bottles" was inserted – Draught Beer – Earlier, Liquor Policy – Clause 36.1 – Prohibiting sale of "Draught Beer" through retail shops and only permitting it to be sold in "Sealed Bottles" – Challenge as to in W.P. No. 1728/2013 – Vide Order dated 19.03.2013, Petition was allowed & clause 36.1 of Liquor Policy was quashed – Interregnum – State Government amending Rule 8(1) (aa-2) of the Rules of 1996 and incorporating clause 36.1 of Liquor Policy in the said Rules – Challenge as to in present petition – Main contention – Amendment is illegal and ultra vires and has been incorporated to undo the direction or effect of the Judgment rendered in W.P. No. 1728/2013 – Held – Clause 36.1 of Liquor Policy was declared ultra vires in W.P. No. 1728/2013 because there was no change in the concerned Act or Rules and without there being any provision or amendment in the Act or Rules, introduction of clause 36.1 in the Liquor Policy by an executive decision cannot be permitted and now by way of amendment in Rule 8(1) (aa-2) of the Rules of 1996, the above said lacunae or defect in the earlier process has been rectified – So a validating Act can be passed if the lacunae or defect is rectified – Petition dismissed: *Pradeep Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. *23 (DB)*

EXCISE POLICY, 2020-21

– Clause 48 – See – Contract Act, 1872, Section 56: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

EXPLOSIVES ACT (4 OF 1884)

– Section 9B & 9C – See – Criminal Procedure Code, 1973, Section 227: *P. Sadanand Reddy Vs. State of M.P., I.L.R. (2017) M.P. 426*

EXPLOSIVE SUBSTANCES ACT (6 OF 1908)

– Sections 4, 5 & 7 – See – Criminal Procedure Code, 1973, Sections 397 & 401: *Raju Adivasi Vs. State of M.P., I.L.R. (2016) M.P. 2821*

– Section 5 – See – Criminal Procedure Code, 1973, Section 227: *P. Sadanand Reddy Vs. State of M.P., I.L.R. (2017) M.P. 426*

F

FACTORIES ACT (63 OF 1948)

– Section 2(k) & (m) – See – Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, Section 2(1)(d): *Vippy Industries Ltd. Vs. Assessing Officer, Under Building and Other Construction Workers' Welfare Cess Act, 1996, I.L.R. (2017) M.P. 789 (DB)*

– Section 9 & 92 – See – Criminal Procedure Code, 1973, Section 482: *Indu Batni (Mrs.) Vs. State of M.P., I.L.R. (2017) M.P. *79*

FAMILY COURTS ACT (66 OF 1984)

– Section 7 – Jurisdiction – Execution of decree – Decree to pay Rs. 5 lacs was granted by District Court towards education and marriage expenses of daughter – Execution application filed before Family Court – Execution proceeding is not an original proceeding, as recourse to the same is taken after termination of the lis between the parties – Execution proceeding is not covered in the expression "proceeding" as used in Section 7 – Executing Court has jurisdiction to execute decree which was passed prior to establishment of Family Court – Family Court has no jurisdiction to entertain the application for execution of decree granted by District Court – Non-applicant would be at liberty to institute proceeding before the Civil Court which had passed the decree: *Dinesh Sharma Vs. Smt. Jyoti Sharma, I.L.R. (2016) M.P. 1788*

– Section 10 and Hindu Marriage Act (25 of 1955), Section 9 – Application for Restitution of Conjugal Rights – Procedure – Held – Under the Family Courts Act, no separate procedure has been prescribed, therefore the provisions of CPC as recognized by Section 10 of the Act of 1984 would be applicable in the case – Existence of marriage inter se parties is required to be adjudicated applying the said procedure: *Reena Tuli (Smt.) Vs. Naveen Tuli, I.L.R. (2019) M.P. 893 (DB)*

– Section 19 – See – Hindu Marriage Act, 1955, Section 24: *Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais, I.L.R. (2017) M.P. 2441 (DB)*

FERTILIZER (CONTROL) ORDER, 1985

– Clause 24 – See – Essential Commodities Act, 1955, Section 10: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

– Clause 24 – See – Essential Commodities Act, 1955, Section 11: *Harish Chandra Singh Vs. State of M.P., I.L.R. (2020) M.P. 1205*

FINANCE ACT (2 OF 1988)

– Section 89 – Kar Vivad Samadhan Scheme 1998 – Declaration filed by petitioner under Form 1 B of the Scheme – Claiming of benefit under the Scheme of 1998 – Respondents rejected the declaration at threshold on the ground that amount of pending arrears in the declaration differs from amount in previous correspondence – Held – The correctness of the declaration submitted in the prescribed Form for settlement of dispute under the Scheme, cannot be judged on the basis of stand taken by the Assessee in the previous correspondence whereas the disclosures made in the declaration by the petitioner ought to be treated as relevant facts and correctness to be judged on its own merits – Petition allowed – Amount already deposited by the petitioner be given due adjustments by the authority while processing the declaration: *Mech & Fab Industries Vs. Union of India, I.L.R. (2016) M.P. 1703 (DB)*

FINANCE ACT (32 OF 1994)

– Section 106 – Petitioner submitted a declaration form in which he had wrongly declared that no inquiry or investigation or audit is pending against him, which is a basic disqualification to avail the benefit of the Service Tax Voluntary Compliance Encouragement Scheme – If the issue of entitlement to avail the benefit of Scheme is to be decided, then provisions of Section 106 would apply – In the present case, Respondents/Authority has rightly exercised the powers u/S 106: *Yashwant Agrawal & Co. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 3048 (DB)*

– Section 106 Sub-Section (1) – If there is a notice or an order of determination, which has been issued to the assessee in respect of any period, no declaration shall be made with regard to the tax dues on the same issue for any subsequent period: *Yashwant Agrawal & Co. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 3048 (DB)*

– Section 106 Sub-Section (2) – Section 106(2) envisages a situation under which a declaration submitted by an assessee can be rejected, if under Sub-Section (1) he is entitled to declare his tax dues: *Yashwant Agrawal & Co. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 3048 (DB)*

FINANCIAL CODE, M.P.

– Rule 84 – See – Service Law: *Ramhit Sahu Vs. State of M.P., I.L.R. (2017) M.P. *12*

– Rule 84 & 85 – Date of Birth – Correction – Held – Apex Court concluded that in view of Rule 84 of the Code, date of birth recorded in service book at the time of entry in service is conclusive and binding on Govt. servant except if there is any

clerical mistake or negligence on part of that other employee who is recording the same in service book: *Hussaina Bai (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 873*

FOOD SAFETY AND STANDARDS ACT (34 OF 2006)

– Sections 3(j), 26 & 27 – Definition of "Food" - Held - As per Section 3(j) of the Act of 2006, "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption - Definition is clearly wide enough to include "gutkha" which is a substance for human consumption: *Manoj Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 240*

– Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58, Food Safety and Standards Rules, 2011, Rule 1(3), 2 & 4 and Packaging and Labelling Regulations, 2011, Regulation 2.3(1)(5) – Sanction for Prosecution – Grounds – Samples of "Sunfeast Yippee Noodles" sent for testing – Report declared the samples to be misbranded on the ground that mentioning of "No MSG Added" in packaging is misleading as per Regulations – Sanction was granted and complaint was got registered before Court – Challenge to – Held – Report reveals that no MSG content was detected in samples – Declaration of "No MSG Added" was rightly made which cannot be held to be misleading, false or deceptive – Circular of FSSAI also states that prosecution could be launched when label states "No MSG Added" and MSG is found in impugned food stuff – Petitioner has not prima facie violated any provisions of the Act or the Regulations – Further held – While granting sanction, authority is required to apply mind while reaching to conclusion – Impugned order of sanction and prosecution launched against petitioner quashed – Petition allowed: *ITC Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1814*

– Sections 3(1)(zx), 3(1)(i) & 97 – See – Prevention of Food Adulteration Act, 1954, Section 2(ia)(m) r/w 7(i) & 16(1)(a)(i): *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

– Section 3(1)(zx) & 3(1)(zz) – Food Article – "Sub-Standard" & "Unsafe Food" – Held – Food articles seized were only sub-standard as per analyst report and cannot be deemed to be injurious to health or unsafe food as per definitions given in the Act: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Section 3(1)(zx) & 3(1)(zz) – See – National Security Act, 1980, Section 3(2) & (3): *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Sections 49, 51, 52, 54 & 58 and Prevention of Food Adulteration Act (37 of 1954), Sections 7(i), (ii), (v) & 16(1)(a)(i), (ii) – Substitution of Sentence By Penalty – Held – Act of 1954 has been replaced by the Act of 2006 whereby sentence for misbranding and adulteration under 1954 Act has been substituted by penalty –

Applicant entitled to benefit of changes in law – Penalty imposed in place of sentence – Revision partly allowed: *Harish Dayani Vs. State of M.P., I.L.R. (2020) M.P. 226*

– Section 97(1)(iii) & 97(1)(iv) – Repeal & Saving Clause – Held – Section 97(1)(iii) & (iv) provides that repeal of Act shall not affect any investigation or remedy in respect of any penalty, forfeiture or punishment under the repealing Act – Punishment may be imposed as if Act of 2006 had not been passed: *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

FOOD SAFETY AND STANDARDS RULES, 2011

– Rule 1(3), 2 & 4 – See – Food Safety and Standard Act, 2006, Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58: *ITC Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1814*

FOREIGN LIQUOR RULES, M.P., 1996

– Rule 8(1) (aa-2) – See – Excise Act, M.P., 1915, Section 62: *Pradeep Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. *23 (DB)*

– Rule 19(2) – Amendment – Prospective or Retrospective – Held – Amendment in Statute or Rules is prospective unless it is specifically made retrospective, however amendment in respect of procedure is retrospective – In the instant case, license granted to petitioner in 2009-10 and Rule 19(2) was amended on 29.03.2011 – Rule of penalty is not a matter of procedure, it deals with substantive rights of parties therefore Rules applicable during the relevant license year would determine the rights and liabilities of such licensee – Amendment will apply to license granted thereafter and not in respect of license granted earlier – Amendment carried out on 29.03.2011 liberalizing the amount of penalty will operate prospective only: *State of M.P. Vs. M/s. Pernod Ricard India (P) Ltd., I.L.R. (2017) M.P. 1805 (DB)*

FOREIGN TRADE (DEVELOPMENT & REGULATION) ACT (22 OF 1992)

– Section 3 and Constitution – Article 19(1)(g), 19(6) & 21 – Merchanting Trade Transactions (MTT) – Prohibition of Supply of KN 95 Mask – Held – Even though goods are not coming to India at any point of time under MTT, only those goods which are permitted for export or for import are eligible for MTT – It is a policy decision taken by Government of India – Statutory provisions, rules, circulars and notifications are issued from time to time for MTT under the prevailing Foreign Trade Policy – Circular of RBI not violating rights of petitioner – Fundamental rights of freedom of trade & Commerce can be subject to reasonable restrictions – No

absolute ban on MTT – Circular not ultra vires and not violating freedom of trade and commerce of petitioner – Petition dismissed: *Akshay N. Patel (Mr.) Vs. Reserve Bank of India, I.L.R. (2020) M.P. 2768 (DB)*

FOREIGN TRADE POLICY, 2009-14

– Para 4.1.15 & Clause 4.2.6 – Custom Duty – Exemptions – Entitlement – Held – Provision has no application after discharge of export obligation and endorsement of transferability – Petitioner is a bonafide transferee of the said transferable DFIA and cannot be denied exemption from payment of duties on the goods – Once the DFIA is made transferable by licensing authorities, petitioner is not bound to show that actual use of imported goods in the export product and is free to import any goods covered under the description and quantity mentioned within the overall CIF value allowed in the DFIA – There is no necessity to satisfy the requirements of Para 4.1.15 of the Foreign Trade Policy 2009-14 – Petition allowed: *Global Exim (M/s.) Vs. Union of India, I.L.R. (2018) M.P. *81 (DB)*

FOREST

– Explanation – Definition of forest cannot be confined only to reserved forests, village forests and protected forests as enumerated in Forest Act, 1927 – Forest shall include all statutorily recognized forests, whether designated as reserve, protected or otherwise – Term "forest land" will not only include forest as understood in dictionary sense, but also any area recorded as forest in the government records irrespective of the ownership – Further held – As per the government notification, merely because both sides of roads are declared to be protected forest, the road itself will not fall within the purview of protected forest – Merely passing through the roads, it cannot be held that the goods or forest produce are passing through the protected forest: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

FOREST ACT (16 OF 1927)

– and Mines and Minerals (Development and Regulation) Act (67 of 1957) – Field of Operation – Validity – Held – Object and Regulation of the two legislations is different – Forest Act deals with forest and forest wealth with a different object and the 1957 Act deals with mines and minerals – Subjects of 1927 Act and 1957 Act are distinct and separate – There may be an incidental encroachment in respect of small area of operation of two legislation but both the Acts operate in different field – Incidental encroachment of one legislation with another is not forbidden in the Constitutional scheme of distribution of legislative powers – It is the duty of the Court to find out its true intent and purpose and to examine the particular legislation in

its pith and substance – Act of 1957 impliedly repeals the Act of 1927 so far as Section 41 and 1978 Rules are concerned, cannot be accepted – Similarly, the submission, that by the Act of 1957, the provisions of 1927 Act and 1978 Rules have become void, inoperative and stand repealed, cannot be accepted – Various amendments in 1927 Act were made by the State of U.P. in exercise of its legislative powers conferred: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

– Section 2(4) and Mines and Minerals (Development and Regulation) Act (67 of 1957), Transit of Timber & Other Forest Produce Rules, U.P., 1978, Rule 3 and Transit (Forest Produce) Rules, M.P., 2000 – Forest Produce – Held – While considering the definition of Forest Produce, scientific and botanical sense has to be taken into consideration and commercial parlance test may not be adequate in such cases – Nature of different commodities explained: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

– Section 2(4)(b) – Words "brought from" & "found in" – Interpretation – Word "brought from" is an expression which conveys the idea of the items having their origin in forests and they have been taken out from the forest – Word "found in" means the item which has origin from forests, is found in the forest while "brought from" means that items having origin in forest have moved out from the forest: S*tate of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

– Section 6 – Personal notice to the possessor – Whether required – Held – Section 6 only requires that Forest Settlement Officer shall publish in local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation specifying as nearly as possible, the situation and limits of the proposed forest; explaining the consequences which will ensue on the reservation of such forest and fixing a period not less than three months from the date of such proclamation, and requiring every person claiming any right u/S 4 or 5 either to present to Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation claimed in respect thereof – There is no provision of issuing personal notice to the possessor of the land: *Gajraj Singh Vs. State of M.P., I.L.R. (2017) M.P. 889*

– Section 26 & 41 – See – Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P., 1969, Section 5 & 15: *State of M.P. Vs. Smt. Kallo Bai, I.L.R. (2017) M.P. 2063 (SC)*

– Sections 26(1)(g), 41, 52 & 68 – Seized Vehicle – Confiscation & Compounding – Held – Admission of appellant regarding commission of offence and use of vehicle in it, by itself cannot be a basis to deny option of compounding predicated in Section 68 – Authority has not exercised its discretion in judicious manner – Impugned

order quashed – Prayer of compounding allowed – Appeal allowed: *Rakesh @ Tattu Vs. State of M.P., I.L.R. (2020) M.P. 604 (SC)*

– Sections 41, 42 & 76 – See – Criminal Procedure Code, 1973, Section 468 & 473: *Vinay Sapre Vs. State of M.P., I.L.R. (2018) M.P. 815*

– Section 52 – Confiscation of Vehicle – Passenger travelling in a bus was alleged to have kept four bags of "Kullu Gond" on the roof of the bus – Driver, Conductor and Passenger were prosecuted under different Acts, however, they were acquitted as the prosecution had failed to prove the seizure of forest produce – Further, no evidence on record that forest produce was transported on the bus in the knowledge and with the connivance of petitioner – Acquittal will have material bearing to the word "there is a reason to believe that a forest offence has been committed" –Contrary satisfaction after the acquittal from charges by Magistrate cannot be accepted – Order of confiscation quashed – Petition allowed: *Krishnapal Singh Vs. State of M.P., I.L.R. (2016) M.P. 1332*

– Section 52 – See – Criminal Procedure Code, 1973, Section 451 & 457: *Jakir Khan Vs. State of M.P., I.L.R. (2017) M.P. 1747*

– Section 52 – Seizure of Forest Produce – Confiscation of Vehicle – It was alleged that JCB machine, which belonged to the petitioner was found illegally excavating soil 4 metres away from the main road in the forest area – JCB machine was seized and confiscation proceedings were initiated by the forest department – Challenge to – Held – In absence of any seizure of forest produce or its panchnama, entire confiscation proceedings initiated in respect of vehicle cannot be sustained and is hereby quashed – Respondents directed to handover JCB machine to petitioner expeditiously – Petition allowed: *Vishwanath Singh Vs. State of M.P., I.L.R. (2018) M.P. *30*

– Sections 52 & 52-A, (as amended by Act No. 25 of 1983), 52(3), 52(4)(a) & 52-C – See – Criminal Procedure Code, 1973, Section 451 & 482: *State of M.P. Vs. Uday Singh, I.L.R. (2020) M.P. 16 (SC)*

– Sections 52(3), 52(5) & 55 and Constitution – Article 19(1)(g) – Confiscation of Vehicle – Stage of Trial – Fundamental Rights – In respect of transportation of contraband teak wood, tractor of petitioner/accused was seized by Forest authorities – Competent authority SDO started the confiscation proceedings and ordered confiscation of vehicle – Challenge to – Held – Confiscation can be made upon conviction of the offender in such forest offence committed by him for which his vehicle has been seized – Legislative intent is clear that confiscation proceeding can only be held and culminated after criminal trial for commission of forest offence is over otherwise, confiscation before conviction would be a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the

Constitution to carry on his trade, occupation or business – Vehicle was directed to be returned to petitioner on furnishing a bank guarantee alongwith certain conditions – Petition disposed: *Santra Bai Lodha (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 1269*

– Section 68 – Compounding of Offence – Held – When accused takes recourse to remedy of compounding of offence, it presupposes that he has admitted the commission of offence or use of vehicle in it – Authority is to consider the tangible factors such as gravity of offence and use of vehicle in commission of specified offence in the past etc: *Rakesh @ Tattu Vs. State of M.P., I.L.R. (2020) M.P. 604 (SC)*

FOREST ACT, INDIAN (M.P. AMENDMENT) 2009 (7 OF 2010)

– Section 52-A – See – Criminal Procedure Code, 1973, Section 482: *State of M.P. Vs. Saurabh Namdeo, I.L.R. (2016) M.P. 634*

FUNDAMENTAL RULES, M.P.

– Rules 12(A), 13, 14(A) & 14(B) – See – Service Law: *State of M.P. Vs. Rajendra Kumar Jain, I.L.R. (2018) M.P. 2880 (DB)*

– Rule 17 A – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

– Rule 53 – See – Service Law: *Rajesh Patel Vs. MP PKVV Co. Ltd., I.L.R. (2017) M.P. 801*

– Rule 54 & 54-A(2)(i) – See – Service Law: *K.K. Bajpai Vs. Union of India, I.L.R. (2019) M.P. 1407 (DB)*

– Rule 54-B – See – Service Law: *Haridas Bairagi Vs. State of M.P., I.L.R. (2019) M.P. *49*

G

GAS CYLINDER RULES, 1981

– Rule 2(xxv) – See – Electricity Act, 2003, Section 62(3): *Shivco L.P.G. Bottling Co. Vs. M.P. Electricity Board, I.L.R. (2017) M.P. *113*

GENERAL CLAUSES ACT (10 OF 1897)

– Section 3(3) – Question of exhibit affidavit as document – Exhibition of affidavit as document is not permitted by the Court: *Kalusingh Vs. Smt. Nirmala, I.L.R. (2016) M.P. 450*

– Section 3(3) – See – Civil Procedure Code, 1908, Order 18 Rule 4 & Order 19 Rule 1 & 2: *Kalusingh Vs. Smt. Nirmala, I.L.R. (2016) M.P. 450*

– Section 6 – See – Prevention of Food Adulteration Act, 1954, Section 2(ia)(m) r/w 7(i) & 16(1)(a)(i): *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

– Section 9 & 10 – See – Representation of the People Act, 1951, Sections 67A, 81 & 86: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2019) M.P. 1420*

– Section 13 – See – Civil Procedure Code, 1908, Section 16 & 17: *Shivnarayan (D) By L.Rs. Vs. Maniklal (D) Thr., L.Rs., I.L.R. (2019) M.P. 1178 (SC)*

– Section 21 – Modification of Order – Held – An authority who has a power to issue an order has an inbuilt power to rescind, modify and alter its own order: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Section 21 – See – Constitution – Article 226: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Section 21 – See – Income Tax Act, 1961, Section 12-A: *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. Commissioner of Income Tax, Gwalior, I.L.R. (2018) M.P. 1039 (SC)*

– Section 21 and Medical Council of Indian Establishment of Medical College Regulation, 1999, Regulation 3 – Essentiality Certificate – Act of State – Held – Act of State in issuing Essentiality Certificate is a *quasi-judicial* function and any fraud vitiates the act or order passed by any *quasi-judicial* authority – Provision of Section 21 of Act of 1897 cannot be extended to *quasi-judicial* authorities: *Sukh Sagar Medical College & Hospital Vs. State of M.P., I.L.R. (2020) M.P. 1969 (SC)*

– Section 26 – Offence punishable under two or more enactments – Held – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence – Provisions of Section 409 of IPC and Section 3/7 of the Essential Commodities Act operate in a different plane and do not constitute the same offence – Charge u/S 409 of IPC in such a case is maintainable: *Jagdish Korku Vs. State of M.P., I.L.R. (2016) M.P. 2418*

– Section 27 – See – Negotiable Instruments Act, 1881, Section 138(b) & (c): *Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd., I.L.R. (2017) M.P. 2290*

– Section 27 – Service of Notice – Held – Record reveals that notice for appointment of arbitrator was sent by applicant on correct address of respondent and same was properly served – Section 27 of the Act of 1897 would be applicable in full force: *Shakti Traders (M/s) Vs. M.P. State Mining Corporation, I.L.R. (2019) M.P. 1763*

GENERAL CLAUSES ACT, M.P., 1957 (3 OF 1958)

– Section 10 – See – Land Revenue Code, M.P., 1959, Section 59(12) & 172: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2020) M.P. 2166*

– Section 16 – See – Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, M.P. 2011, Rule 7 (amended): *State of M.P. Vs. Ramesh Gir, I.L.R. (2020) M.P. 2073 (DB)*

GENERAL SALES TAX ACT, M.P., 1958 (2 OF 1959)

– Section 43(1) – See – Commercial Tax Act, M.P. 1994, Section 69(1): *Sadguru Fabricators & Engineers P. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 2199 (DB)*

GOVANSH VADH PRATISHEDH ADHINIYAM (6 OF 2004)

– Sections 4, 5, 6, 6-A, 9, 11(5) & 11(B) and Prevention of Cruelty to Animals Act (59 of 1960), Sections 11(b), 11(d) & 11(5) – Prohibition on transport of cow or beef – Penalty – Confiscation of vehicle – Revision – Treating animals cruelly – Collector can confiscate the vehicle when by a competent court it is found that any violation of section 4, 5, 6, 6-A and 6-B of the Adhiniyam has been committed – The Collector should have refrained from passing any order of confiscation of vehicle during pendency of the criminal case – In absence of any finding with regard to violation of said Section of the Adhiniyam, by the Criminal Court – The order passed by the Collector confiscating the vehicle u/s 11(5) of the Adhiniyam is bad in law: *Sheikh Kalim Vs. State of M.P., I.L.R. (2016) M.P. 924*

GOVANSH VADH PRATISHEDH RULES, M.P., 2012

– Rule 5 & 6 and Criminal Procedure Code, 1973 (2 of 1974), Section 451 – Confiscation by District Magistrate – Manner of appeal – Interim custody of seized vehicle – District Magistrate is at liberty to initiate proceedings for confiscation of vehicle after conclusion of trial by the concerned Magistrate – Till then seized vehicle given on interim custody to the applicants, if they are registered owner of the vehicle or to the registered owner of the vehicle as the case may be upon certain condition: *Sarvan Vs. State of M.P., I.L.R. (2016) M.P. 1214*

GOVERNMENT GRANTS ACT (15 OF 1895)

– Section 2 & 3 and Transfer of Property Act (4 of 1882) – Applicability – Held – Act of 1882 is not applicable to any grant made under the provisions of Act of 1895 and it is mandatory u/S 3 of the Act that, grant will be governed by its term despite of anything in any other law: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS) RULES, 1961

– Article 77, Clause 3 and Department of Personnel and Training (DoPT) Circulars – Applicability – Held – Railways is specifically excluded from ambit of the scope of business allocated to Department of Personnel and Training (DoPT) – Railways is not bound by the memorandum issued by Department of Personnel and Training (DoPT) and are empowered to frame its own rules to lay down service conditions of its employees – Matters relating to recruitment, promotion and seniority in respect of Ministry of Railways do not fall within jurisdiction of Department of Personnel and Training (DoPT) and thus it cannot issue binding circulars upon Railways – Service conditions of Railway employees are governed by rules framed by Railways which includes IREC and IREM: *Prabhat Ranjan Singh Vs. R.K. Kushwaha, I.L.R. (2019) M.P. 245 (SC)*

GOVERNMENT SERVANTS (TEMPORARY AND QUASI-PERMANENT SERVICE) RULES, M.P., 1960

– Rule 1(2) – Whether these Rules govern the services of a daily wager also – Held – Rules apply to a person holding civil post and thus does not cover daily wager – Claim of the petitioner that he has attained quasi-permanent status as he joined as chowkidar on daily wages and continued as such is not correct: *Siyaram Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3325*

GRAMODYOG ADHINIYAM, M.P. (16 OF 1978)

– Section 29 and Khadi Tatha Gramodyog Viniyam, M.P., 1980, Clause 4(5) – Service Law – Departmental Enquiry after attaining age of superannuation – Show cause notice & charge sheet dated 27.04.2013 were issued after 11 months of superannuation whereas, allegation relates back to the year 1997-98 – Held – Initiation of Departmental Enquiry and continuation of the same after retirement is not permissible under Viniyam, 1980 – Viniyam do not provide for withholding of retiral benefits for recovery of the loss caused – Cause for initiation of Departmental Enquiry

was created to the department 15 years prior to the date of superannuation – Same would amount to arbitrary exercise of powers with malafide intention – Show cause notice and charge sheet quashed: *Sevakram Shivedi Vs. M.P. Khadi Tatha Gram Udhyog, I.L.R. (2017) M.P. *28*

GUARDIANS AND WARDS ACT (8 OF 1890)

– Section 4 – See – Constitution – Article 226: *Anushree Goyal Vs. State of M.P., I.L.R. (2020) M.P. 1565*

– Section 7 & 8 – Custody of child – Factor for consideration – Welfare of the child – Material and physical well being – The education and upbringing – Happiness and moral welfare: *Parveen Begam Vs. Mahfooj Khan, I.L.R. (2017) M.P. 105 (DB)*

– Sections 7, 8 & 25 – Guardianship – Higher education and moral values of life are prime consideration over and above the love and affection: *Parveen Begam Vs. Mahfooj Khan, I.L.R. (2017) M.P. 105 (DB)*

– Sections 7, 8 & 25 – Mohammadan Law – Hanafi Law – Custody of child – Mother living immoral life – Held – Disqualified for custody – However, it would be just, proper & humane to grant her visitation right in recognition of her motherhood: *Parveen Begam Vs. Mahfooj Khan, I.L.R. (2017) M.P. 105 (DB)*

– Section 17 – Custody of child – Grant of – Conflict between personnel law and consideration of welfare of the child – Latter must prevail: *Parveen Begam Vs. Mahfooj Khan, I.L.R. (2017) M.P. 105 (DB)*

H

HEALTH SERVICES RECRUITMENT RULES, M.P., 1967

– Rule 6 – See – Service Law: *Saiyad Ghazanafar Ishtiaque (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2142*

HIGH COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) ACT (28 OF 1954)

– Section 17B – See – Supreme Court Judges (Salary and Conditions of Service) Act, 1958, Section 16B: *Justice Shambhu Singh (Rtd.) Vs. Union of India, I.L.R. (2020) M.P. 2804 (DB)*

HIGH COURT OF MADHYA PRADESH (CONDITIONS OF PRACTICE) RULES, 2012

– See – Advocates Act, 1961, Section 34: *Praveen Pandey Vs. State of M.P., I.L.R. (2018) M.P. 2401 (DB)*

HIGH COURT OF MADHYA PRADESH OFFICERS AND EMPLOYEES RECRUITMENT AND CONDITIONS OF SERVICE (CLASSIFICATION, CONTROL, APPEAL AND CONDUCT) RULES, 1996

– Equal Pay for Equal Work – Petitioners who are class III and IV employees of the High Court praying for grant of higher pay scale on the ground that the State Government on the basis of Shetty Pay Commission has revised the pay scale of the employees working in the District Court under the same cadre – Held – As per the principle laid down by the Apex Court, respondents directed to grant one additional increment to petitioners who are working below grade pay of Rs. 3600 and two additional increments to petitioners who are working in the grade pay of Rs. 3600 – Petitioners would be eligible to get arrears of salary – Further held – In respect of the higher pay scale and allowance, High Court has already made recommendations to the State Government for implementation of Shetty Pay Commission to the employees of the High Court which is still pending – Respondents are directed to finalize the same within a period of four months – Petition partly allowed: *Kishan Pilley Vs. State of M.P., I.L.R. (2017) M.P. 1423 (DB)*

HIGH COURT OF MADHYA PRADESH RULES, 2008

– Rule 10-A(1) & (2) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Charge-sheet – Filing of Charge-sheet alongwith Petition – Requirement – Held – Filing of charge sheet at the time of presentation of petition seeking quashment of FIR, is not obligatory and cannot be made necessary even in a case where charge-sheet has already been filed before trial Court – It is discretion of Court to direct filing of charge-sheet depending on facts of the case – Directions to registry, not to accept petitions without charge-sheet is unjustified and contrary to Rules: *Neeta Soni Vs. State of M.P., I.L.R. (2019) M.P. 1939 (DB)*

– Rule 10-A(2) – Defects/Defaults – Held – Presentation of case is not restricted even if there is default or non-observance of Rules – If petition is filed with defects, its acceptance by the registry cannot be stopped by an order of the Court: *Neeta Soni Vs. State of M.P., I.L.R. (2019) M.P. 1939 (DB)*

– Rule 48 – See – Criminal Procedure Code, 1973, Section 397 & 401: *Simmi Dhillo (Smt.) Vs. Jagdish Prasad Dubey, I.L.R. (2018) M.P. *27*

– Chapter IV, Rule 8(3) – Reference to Larger Bench – It is not open to Single Judge to doubt the correctness of the view expressed by Division Bench – However, Single Judge sitting alone while hearing a case is free to refer the decision of coordinate or Larger Bench of High Court for reconsideration: *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943 (FB)*

– Chapter IV - Rule 12 – Practice and Procedure – Questions Referred to Larger Bench – Jurisdiction – Division bench referred the present matter to Larger bench without formulating questions to be adjudicated – Held – Rule 12 does not envisage reference of the entire case to a larger bench and thus it is incumbent upon the referring bench to formulate questions for reference to Larger bench and the referee bench has jurisdiction only to answer the questions referred to it and thereafter it is required to be decided by the referring bench in accordance with the opinion of the larger bench on referred questions – Larger bench cannot delve into the matter and formulate questions involved in the controversy – In such circumstances, in Rule 12, the word "may" occurring between words "it" and "formulate" will have to be read as "shall" – Further held – In the present case, an application for withdrawal of the proceedings was also filed before the larger bench for which the referring Court is competent to decide the same and hence the matter is required to be sent back to the referring division bench for disposal of the same – Matter be placed before the Acting Chief Justice for being posted before the referring division bench for disposal of the application for withdrawal and in case application is rejected, to formulate questions for reference to larger bench – Questions referred answered accordingly: *Bhawna Kale Vs. State of M.P., I.L.R. (2017) M.P. 1293 (FB)*

– Chapter IV, Rule 13 – See –Representation of the People Act, 1951, Section 80 A: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Chapter VII, Rule 6(4) – See – Representation of the People Act, 1951, Proviso to Section 83(1): *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Chapter 15 Rule 13 – See – Civil Procedure Code, 1908, Section 114 & proviso to Order 5 Rule 9 (5): *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. M/s. Schaltech Automation P. Ltd., I.L.R. (2016) M.P. 825*

HIGH COURT RULES AND ORDERS, M.P.

– Chapter 3 – See – Constitution – Article 226: *Surendra Security Guard Services (M/s.) Vs. Union of India, I.L.R. (2018) M.P. 54 (DB)*

HIGHER JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 1994

– Section 9(c) – See – Service Law: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 1394 (DB)*

– Rule 5(1)(c) and Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 6(6) – Appointment under the Rules of 1994 – Disqualification – Applicability of Rules of 1961 – Held – High Court clearly mentioned in advertisement that candidate has to satisfy eligibility criteria as per Rules of 1994 as well as Rules of 1961, thus independence of judiciary is not impinged when High Court itself makes the 1961 Rules applicable for appointment of posts of Higher Judicial Services – Applicability of 1961 Rules does not relate to core of judicial service but relates to procedural aspect – Further held – Mere participation in written examination and interview do not accrue any right in favour of petitioner and will not make a candidate eligible, if in terms of advertisement he is found not eligible for appointment under the Rules of 1961 – Petition dismissed: *Bhagyashree Syed (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2119 (DB)*

HINDU ADOPTIONS AND MAINTENANCE ACT (78 OF 1956)

– Section 12 – Compassionate Appointment – Whether an adopted son has a right of consideration for compassionate appointment – Held – Yes, 'Son' includes an 'adopted son' as per the provisions of the Act of 1956, so adopted son has a right of consideration for compassionate appointment – It is open to respondents to examine the validity of adoption – Respondents to take a final decision by a reasoned order within 90 days – Petition allowed: *Manoj Kumar Nagre Vs. The Commissioner of M.P., I.L.R. (2017) M.P. 798*

– Section 12(b) – Effect of Adoption – Appellants challenging the concurrent findings of civil & appellate Court – Suit filed by plaintiff is decreed on the ground that he was taken in adoption at the age of 10-11 years but his right on the ancestral property has not come to an end – Held – Suit filed by plaintiff is for partition – Share of a coparcener in undivided property is fluctuating share which keeps on varying with addition and extinct of members of coparcenery – Share is crystallized when property is partitioned – Therefore, till partition takes place the ancestral property cannot be said to have vested in coparcener – Property which stands vested in the adopted child before adoption continues to be vested in him u/S 12 (b) – Respondent no. 01 being a member of Coparcenery having undivided share in coparcenery before the adoption – Properties of the Coparcenery of the natural father did not vest in him

and are not protected u/S 12(b) – Respondent no. 1 not entitled to partition of ancestral property after his adoption – Appeal allowed – Judgment and decree set aside: *Ranchhod Vs. Ramchandra, I.L.R. (2017) M.P. 1718*

– Section 19 – Maintenance of Widowed Daughter-in-Law – Claim over Property of Mother-in-law – Held – Mother-in-law cannot be fastened with any legal liability to maintain her daughter-in-law – Property of mother-in-law is out of the purview of Section 19: *Jyoti Vs. Seema Rathore, I.L.R. (2019) M.P. 2568 (DB)*

– Section 19 & 22 – Maintenance of Widowed Daughter-in-Law – Death of Father-in-Law – Effect – Held – After death of father-in-law, right of widowed daughter-in-law will not be extinguished – It can be enforced against co-parceners who held the said property by survivorship – Trial Court rightly granted maintenance – Appeal dismissed: *Jyoti Vs. Seema Rathore, I.L.R. (2019) M.P. 2568 (DB)*

– Section 19 & 22 – Maintenance of Widowed Daughter-in-Law – Held – Widowed daughter-in-law is entitled to be maintained after death of her husband by father-in-law to the extent she is unable to maintain herself out of her own earning/ property etc – This obligation can also be met from the property of which the husband was a co-sharer – Provision creates a right to obtain maintenance from coparcenary property of father-in-law to the extent of share of her deceased husband: *Jyoti Vs. Seema Rathore, I.L.R. (2019) M.P. 2568 (DB)*

– Section 19 & 22 – Widowed Daughter-in-law living separately – Right of Maintenance – Effect – Held – Hindu widow is not bound to live with relatives of husband and they have no right to compel her to live with them – Widow does not forfeit her right to property or maintenance merely on account of her going and residing with her brother: *Jyoti Vs. Seema Rathore, I.L.R. (2019) M.P. 2568 (DB)*

– Sections 21, 22(1) & (2) – Maintenance – Unmarried Daughter – Estate of Deceased Father – Charge – Held – Heirs of deceased Hindu are bound to maintain the dependent of a Hindu out of the estate inherited by them from deceased – Dependant's claim shall be charged on the estate of deceased if charge is created by Will of deceased or by decree of Court – Right of petitioner created by decree of Court – She is entitled to receive maintenance from second wife of father, who inherited estate of her deceased father – Petition allowed: *Jhalak (Kumari) Vs. Rahul (Deceased) Through Smt. Seema, I.L.R. (2020) M.P. 156*

HINDU LAW

– Joint Hindu Family – Coparcenership – Held – Apex Court concluded that under Hindu Law, Coparcenership is a necessary qualification for the managership of Joint Hindu Family – A widow is not a coparcener, she has no legal qualification to

become the manager (karta) of a joint hindu family: *Ramgopal Through L.Rs. Vs. Smt. Jashoda Bai Through L.Rs., I.L.R. (2017) M.P. 2978*

– Partition – Rights of the holder of the divided HUF property after the division of property – Held – Holder of the divided HUF property after partition has unfettered rights to deal with the separated property including sale or mortgage in the same manner as he can dispose of a self acquired property: *Sushila Bai Vs. Smt. Rajkumari, I.L.R. (2017) M.P. 662*

HINDU MARRIAGE ACT (25 OF 1955)

SYNOPSIS

1. Annulment of Marriage

– Section 5(iii) & 12(1)(c) – Child Marriage – Annulment of Marriage – Husband filed a suit seeking declaration of marriage null and void on the ground that at the time of marriage his wife was less than 18 years of age and marriage was consummated under threat and pressure – Suit was decreed and was further confirmed by the High Court – Challenge to – Held – Child marriages are voidable at the option of the minor spouse at the time of marriage – Section 12(1)(c) makes it clear that only minor spouse has a right to seek annulment of marriage – It is admitted that husband was a major at the time of marriage and was seeking annulment of marriage on the ground of fraud and coercion where age of wife was one of the grounds raised by husband – Matter remanded back to High Court for fresh consideration – Appeal disposed of: *Bhagwati @ Reena Vs. Anil Choubey, I.L.R. (2017) M.P. 1289 (SC)*

– Section 5 – See – Criminal Procedure Code, 1973, Section 125: *Munni Devi (Smt.) Vs. Pritam Singh Goyal, I.L.R. (2017) M.P. *106*

– Sections 5, 11 & 16 – See – Succession Act, Indian, 1925, Section 372: *Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Devi, I.L.R. (2017) M.P. 1211*

2. Applicability of Act

– Section 1(2) & 2 – Applicability of the Act – Held – Apex Court concluded that Hindus domiciled in India even if residing outside its territory, the provisions of Act of 1955 shall be applicable to them – Appellant has not made any averment nor adduced any evidence that he abandoned his domicile of origin i.e. India and acquired domicile in USA: *Ajay Sharma Vs. Neha Sharma, I.L.R. (2019) M.P. 406 (DB)*

3. Divorce/Cruelty/Irretrievable Breakdown of Marriage

– Section 9 & 13 – Divorce – Cruelty – Divorce decree against wife – Husband and wife living separately for more than 6 years – Allegation of adultery & cruelty against each other – Evidence of mental cruelty by wife available – Revival of marriage not possible, thus attracts the concept of irretrievable breakdown – No illegality in impugned judgment – Suit for restitution and Appeal against divorce decree, dismissed: *Disha Kushwaha Vs. Rituraj Singh, I.L.R. (2019) M.P. 2055 (DB)*

– Section 13 – Divorce – Grounds - "Irretrievable Breakdown of Marriage" – Held – Irretrievable breakdown is not a ground for divorce but its essence may be put in – Apex Court directed that Courts are duty bound to see the repercussion, consequences, impact and ramification of criminal and other proceedings and also circumstances in which grounds specified under the Act, have been pleaded and proved – Chances of revival of marriage for said reasons may also looked into while recording the findings: *Disha Kushwaha Vs. Rituraj Singh, I.L.R. (2019) M.P. 2055 (DB)*

– Section 13 – Divorce on the ground of Adultery and Cruelty – After marriage, appellant/wife hardly stayed with her in-laws for two months – She ran away with one Imtiaz Khan and was later discovered and caught in a compromising position in some hotel – Police was also informed and offence was registered against Imtiaz Khan – After the incident, wife filed several cases against the husband and in-laws u/S 125 CrPC, u/S 498-A IPC and u/S 12 of the Domestic Violence Act which were found to be false and were dismissed by the court below – Held – Evidence in the case clearly shows that incident of eloping with Imtiaz Khan has been duly established and appellant/wife did not produced any witness to dislodge such allegation – Filing repeated false cases against the husband and his family members also amount to mental cruelty – Allegations of Adultery and cruelty duly established – Decree of divorce rightly granted – Appeal dismissed: *Jyoti Soni (Smt.) Vs. Mithlesh Soni, I.L.R. (2017) M.P. 628 (DB)*

– Section 13 – Epilepsy – Divorce application by husband on the ground that wife suffering from epilepsy – Application for examination of wife for mental disorder allowed by the Court below – Held – Plaintiff has to prove that ailment was in existence

before solemnization of marriage and was deliberately suppressed by family members of wife – It is nowhere stated in the divorce application and no prima facie evidence of epilepsy found – Order of Trial Court set aside as it will amount to collection or creation of evidence – Writ Petition allowed: *Veenita Bai (Smt.) Vs. Dinesh Kumar, I.L.R. (2016) M.P. 1635*

– Section 13 – "Irretrievable Breakdown of Marriage" – Circumstances which fall within purview of "irretrievable breakdown of marriage" – *Illustrated & explained: Disha Kushwaha Vs. Rituraj Singh, I.L.R. (2019) M.P. 2055 (DB)*

– Section 13 – See – Civil Procedure Code, 1908, Section 24: *Aarti Sahu (Smt.) Vs. Ankit Sahu, I.L.R. (2020) M.P. 2171*

– Section 13 and Evidence Act (1 of 1872), Section 45 – DNA Test – Ground – Held – Where husband did not have access to his wife inspite of that wife got pregnant and he claims that he is not the biological father of the child, then DNA test can be ordered to resolve the dispute – In absence of DNA test, it would not be possible to establish and confirm the assertions in respect of infidelity – Prima facie, even according to reply filed by wife, there is serious dispute regarding paternity – Trial Court directed to proceed for DNA test – Petition allowed: *Jitendra Singh Kaurav Vs. Smt. Rajkumari Kaurav, I.L.R. (2019) M.P. 1251*

– Section 13(1) (i)(i-a) – Cruelty – Meaning – Willful refusal to fulfill matrimonial obligations in certain circumstances amounts cruelty: *Basudev Jatav Vs. Smt. Rekha Jatav, I.L.R. (2016) M.P. 525 (DB)*

– Section 13(1)(i)(i-a) – Cruelty – Obligation of social status of the persons involved and the economic conditions and other matters varies from time to time, place to place and individual to individual – It is antithesis to natural love and affection between husband and wife – Destructive of soft feeling of concern for each other and sense of togetherness which is bed rock of matrimonial relations: *Basudev Jatav Vs. Smt. Rekha Jatav, I.L.R. (2016) M.P. 525 (DB)*

– Sections 13(1)(ia), 13(1)(ib) & 25 – Cruelty & Desertion – Suit for divorce by husband on the ground of mental cruelty and desertion – Earlier suit for restitution of conjugal rights by husband was decided and a compromise was made between both the parties to live together – Due to adamant behavior of the wife, parties cannot live together – Admission of wife that she is living alone & not ready to stay with the husband at any cost – Trial Court passed decree of divorce in favour of husband which is the subject matter of challenge in the present appeal – Held – The husband has duly pleaded & proved the instances of desertion and mental cruelty by way of oral evidence and documents – Trial Court has rightly granted the decree of divorce on the ground of mental cruelty and desertion – Maintenance u/S 25 of the

Act of 1955 rightly granted – Custody of child to remain with the husband and wife will be at liberty to meet him at any time – Appeal dismissed: *Vineeta Choudhary (Smt.) Vs. Radheshyam, I.L.R. (2017) M.P. *32 (DB)*

– Section 13(1)(i)(i-b) – Animus deserandi – Proved – Wife deserted the husband to live at her parents house prior to joining job – Wife took away her jewellary and articles – Refused to come back – Living separately for four years: *Basudev Jatav Vs. Smt. Rekha Jatav, I.L.R. (2016) M.P. 525 (DB)*

– Section 13(1) (i)(i-b) – Desertion – Means – Negation of living together which is essence of matrimony – Unjustifiable withdrawal from company of the other – Findings of factum of desertion and animus of desertion are essential: *Basudev Jatav Vs. Smt. Rekha Jatav, I.L.R. (2016) M.P. 525 (DB)*

– Section 13(1) (i)(i-b) – Desertion – Wife's employment at a place other than husband – Per-se – Not constitute desertion: *Basudev Jatav Vs. Smt. Rekha Jatav, I.L.R. (2016) M.P. 525 (DB)*

– Sections 13(1)(1-A) & (1-B) – Cruelty and desertion – Respondent left her matrimonial home and does not join her husband for more than two years, without any reasonable excuse – She is guilty of desertion – It is total repudiation of the obligation of marriage – Further respondent lodged FIR against appellant and his family members u/s 498A of IPC after 17 years of marriage – Respondent guilty of desertion and cruelty – Decree of divorce passed: *Satish Kumar Jain Vs. Smt. Usha Jain, I.L.R. (2016) M.P. 199 (DB)*

– Sections 13 (1)(i a) & 13 (1)(i b) - Cruelty and Desertion - Application under Section 13 of the Act of 1955 by husband on the ground of Cruelty & Desertion - Trial Court decreed the suit - Appeal on the ground that husband had cohabitated within two years immediately preceding presentation of the divorce petition – Held – As the fact of cohabitation within two years immediately preceding presentation of the divorce petition has been denied by the husband & parties are living separately for last 15 years, the conduct of the wife amounts to cruelty - Impugned Judgment & decree u/s 13 (1)(i a) & u/s 13 (1)(i b) of the Act of 1955 does not call for any interference - Appeal is hereby dismissed: *Kiran Chourasiya (Smt.) Vs. Shri Manoj Chourasiya, I.L.R. (2016) M.P. 1772 (DB)*

4. Divorce by Mutual Consent

– Section 13-B – Divorce by Mutual Consent – Rights of Minor Children – Determination – Held – Dissolution of marriage is between husband and wife where they can give up their rights and interest in property of other party but rights of minor daughter cannot be terminated with consent of parents, her legal right will survive

and it will be as per her discretion when she attains majority whether to exercise such right or not – Application u/S 13-B allowed – Appeal disposed of: *Rakhi Shukla (Smt.) Vs. Manoj Shukla, I.L.R. (2019) M.P. *27 (DB)*

– Section 13-B – Divorce by Mutual Consent – Video Conferencing – Held – To advance the interest of justice, Court has wide discretion and can also use the medium of video conferencing and permit genuine representation of parties through close relations such as parents or siblings where parties are unable to appear in person for any just and valid reasons: *Baljeet Kaur (Smt.) Vs. Harjeet Singh, I.L.R. (2018) M.P. 1958*

– Section 13-B – Divorce by Mutual Consent – Waiving the waiting period of Six Months – Held – Waiver application can be filed one week after first motion giving reasons and if conditions enumerated by Apex Court in (2017) 8 SCC 746 are satisfied, waiver of waiting period of 6 months for second motion will be the discretion of Court – Court must be satisfied about separate living of parties for more than statutory period, efforts at mediation and reconciliation has failed and there is no chance of reconciliation and further waiting would only prolong their agony – Matter remanded back to Trial Court for decision afresh in light of Apex Court judgment – Petition allowed: *Baljeet Kaur (Smt.) Vs. Harjeet Singh, I.L.R. (2018) M.P. 1958*

– Section 13-B – See – Civil Procedure Code, 1908, Section 114 & Order 43 Rule 1-A(2): *Shiv Singh Vs. Smt. Vandana, I.L.R. (2019) M.P. *64*

– Section 13-B – See – Criminal Procedure Code, 1973, Section 125: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

– Section 13-B(2) – Waiving of Cooling Period – Grounds – Held – Merely because parties residing separately for higher education cannot be termed as separation because of any mutual understanding or dispute – Neither parties separated for longer period nor into any litigation for longer period – Chances of reconciliation cannot be overruled – Revision dismissed: *Kumar Avinava Dubey Vs. Smt. Varsha Mishra, I.L.R. (2020) M.P. *2*

– Section 13-B(2) – Waiving of Cooling Period – Mandatory or Discretion of Court – Held – Provision of Section 13-B(2) of the Act of 1955 is not mandatory and is directory – Family Court can waive cooling period but after considering, chances of reconciliation, period of separation & period of litigation – Both parties ready to waive cooling period, would not mean that Court is under obligation to waive the same – Discretion has to be exercised in a judicious manner: *Kumar Avinava Dubey Vs. Smt. Varsha Mishra, I.L.R. (2020) M.P. *2*

5. Interim Maintenance Pendente Lite

– Section 24 – Entitlement – Grounds – Income of Husband and Wife – Quantum of Maintenance Amount – Enhancement – Wife alongwith her 6 years old daughter living with her parents – Trial Court granted Rs. 25,000 pm as maintenance to wife – Husband and wife filed separate petitions challenging the order of trial Court – Held – No straight jacket formula can be laid down for determination of maintenance amount u/S 24 of the Act – There is no legal presumption that if person is adequately qualified and is not in employment, it is because of his/her own volition or because of his/her inaction – Husband's monthly income is Rs. 1,85,000 pm – Wife has to take care of her 6 years old daughter – Income of wife's parents are not relevant – Apex Court has held that it is the discretion of the Court to order maintenance from the date of application or from date of order – Maintenance amount of Rs. 25000 pm is inadequate and is enhanced to Rs. 35,000 pm from date of application – Petitions disposed: *Sandeep Jain Vs. Mrs. Nivedita Jain, I.L.R. (2018) M.P. 1159*

– Section 24 – Maintenance Pendente Lite – Applicability of Act – Suit for restitution of conjugal rights filed by husband as per Mahomedan Law – Wife filed application u/S 24 of the Act of 1955 which was allowed – Challenge to – Held – Parties are governed by Muslim Personal Law where there is no such provision for interim maintenance like one existing u/S 24 in the Act of 1955 – Provisions of Act of 1955 not applicable – Impugned order set aside – Petition allowed: *Mohd. Hasan Vs. Kaneez Fatima, I.L.R. (2018) M.P. 1930*

– Section 24 – Maintenance pendent lite – Entitlement – Held – Looking to the short period for which parties stayed together and the conduct of the appellant/ wife, she is not entitled for any relief or claim or any other benefit from respondent/ husband: *Jyoti Soni (Smt.) Vs. Mithlesh Soni, I.L.R. (2017) M.P. 628 (DB)*

– Section 24 – Maintenance Pendente lite – Grounds – Quantum – Family Court vide interim order granted Rs. 2500 pm and Rs. 1500 pm as pendente lite maintenance to wife and infant child respectively – Quantum challenged by wife – Husband submitting that he is unemployed and totally dependent upon his father and elder brother – Held – Notification of 2017 issued under Minimum Wages Act, 1948 prescribed Rs. 350 per day as minimum rate of wages for unskilled labour – Husband, an able bodied man is legally responsible to maintain his wife who has no source of income – Rs. 200 per day for wife and Rs. 100 per day for infant child would suffice to enable them to sustain a life of dignity – Amount of Rs. 6000 pm to wife and Rs. 3000 for child granted – Impugned order modified: *Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais, I.L.R. (2017) M.P. 2441 (DB)*

– Section 24 and Family Courts Act (66 of 1984), Section 19 – Maintenance Pendente lite – Appeal – Maintainability – Held – Full Bench of Allahabad High Court concluded that the nature, character and colour of an order u/S 24 of the Act of 1955 is of a final order as it decides rights and liabilities of wife in a substantial manner therefore can be treated akin to "judgment" – Appeal maintainable – Objection raised by husband rejected: *Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais, I.L.R. (2017) M.P. 2441 (DB)*

6. Permanent Alimony

– Sections 9, 13 & 25 – Permanent Alimony – Application for & Entitlement – Permanent alimony was only granted to children and not to wife, on ground that she never claimed it – Held – Not filing application seeking permanent alimony is merely a circumstance, it cannot be an impediment to deny permanent alimony to wife and allow parties to continue litigation in other courts either in proceedings u/S 125 Cr.P.C. or for maintenance under other laws – Demand of permanent alimony on request made by counsel for wife is sufficient for granting the same: *Disha Kushwaha Vs. Rituraj Singh, I.L.R. (2019) M.P. 2055 (DB)*

– Section 10 & 25 – Judicial Separation & Permanent Alimony/Maintenance – Held – In case where judicial separation is sought u/S 10, there is no barrier for grant of permanent alimony/maintenance to wife for her future life, but after considering the income and other property of the person against whom order is to be passed – Appeal dismissed: *Dharmendra Tiwari Vs. Smt. Rashmi Tiwari, I.L.R. (2020) M.P. 716 (DB)*

– Section 25 – Permanent Alimony – Quantum – Income of Husband & Wife – Held – Husband, an IFS Officer getting salary of approx. 1,80,000 pm and living only with his mother – Wife residing separately with three school going children and having no source of income – They are required to live separately with status of husband or father – Permanent alimony of Rs. 75,000 pm granted: *Disha Kushwaha Vs. Rituraj Singh, I.L.R. (2019) M.P. 2055 (DB)*

– Section 25(2) – Changed Circumstances – Jurisdiction of Court – Held – Section 25(2) also confers ample power on Court to vary, modify or discharge any order for permanent alimony with regard to changed circumstances of parties: *Sanjay Kumar Shrivastava Vs. Smt. Pratibha, I.L.R. (2020) M.P. 218*

7. Restitution of Conjugal Rights

– Section 9 – Restitution of Conjugal Rights – Grounds – "Reasonable Excuse" – Decree for restitution of conjugal rights passed in favour of wife – Challenge to – Held – No incident on record where wife misbehaved with husband or her

behaviour was cruel towards him rather husband never attempted to provide shelter, maintenance charges or medical expenditures to his wife and son – Husband questioned the paternity of his own son which shows that he wants to save himself from liability to maintain the child – Apex Court has held that if husband withdrew from wife's company without any reasonable cause, wife is entitled for decree u/S 9 of the Act – In the instant case, as per the records, appellant do not have any reasonable excuse to withdraw from society of his wife as she is willing to live with husband peacefully whereas husband is continuously making baseless allegations against her – No ground for interference – Appeal dismissed: *Hemant Rawat Vs. Smt. Anubha Rawat, I.L.R. (2018) M.P. 1516 (DB)*

– Section 9 and 7(1) Explanation (a) – Restitution of Conjugal Rights – Maintainability – Denial of Marriage – Held – Mere denial of factum of marriage by husband in written statement would not ipso facto makes the suit not maintainable – After pleading of parties, if either party denies those pleadings, issues may be formulated and evidence be taken by Court which may be decided after recording satisfaction of truthfulness of statements of parties – Judgment and decree passed by trial Court is set aside – Trial Court directed to restore the suit and decide on merits after framing issues and appreciating evidence of parties: *Reena Tuli (Smt.) Vs. Naveen Tuli, I.L.R. (2019) M.P. 893 (DB)*

– Section 9 – See – Criminal Procedure Code, 1973, Section 125: *Kedar Vs. Smt. Seema, I.L.R. (2018) M.P. 2973*

– Section 9 – See – Family Courts Act, 1984, Section 10: *Reena Tuli (Smt.) Vs. Naveen Tuli, I.L.R. (2019) M.P. 893 (DB)*

8. Territorial Jurisdiction

– Sections 1(2), 2 & 9 and Civil Procedure Code (5 of 1908), Section 13 & 14 – Restitution of Conjugal Rights – Territorial Jurisdiction – Domicile – Husband, citizen of U.S.A. – Marriage performed at Gwalior according to Hindu customs and rites – Decree for restitution of conjugal rights passed against husband whereas Court of USA passed a decree of divorce – Held – Wife never visited or resided with husband in USA after marriage and hence did not submit to jurisdiction of the Court of USA – Fact of acquiring domicile of USA is a matter of evidence which has to be proved by cogent evidence, thus at this stage it cannot be said the Courts in India have been bereft of their jurisdiction just because appellant has acquired citizenship of USA – Act of 1955 is in regard to "domicile" and not of "nationality" and hence applicable in present case – Appeal dismissed: *Ajay Sharma Vs. Neha Sharma, I.L.R. (2019) M.P. 406 (DB)*

9. Transfer of Case

– Sections 21-A, 13, 10 & 9 – Practice and procedure – Joint and consolidated trial – Petition u/S 13 and 9 of Hindu Marriage Act are inseparable – Can not be decided separately because either of the petition can be allowed and not the both – Section 21-A of Hindu Marriage Act covers the cases filed under Section 9 of the Act – Thus, subsequent petition must be transferred: *Balvir Singh Gurjar @ Rinku Vs. Smt. Nitu, I.L.R. (2016) M.P. *36*

10. Void/Voidable Marriage

– Section 11 – See – Criminal Procedure Code, 1973, Section 125: *Jyoti (Smt.) Vs. Trilok Singh Chouhan, I.L.R. (2020) M.P. 1837 (SC)*

– Section 12(1)(a) – Voidable Marriages – Suit by husband for declaration of marriage as null and void on the ground of impotency – Wife not having vagina & uterus, so not able to perform sexual intercourse – Fact concealed by father & brother of wife – Defence raised by wife that husband used to beat her and case of bigamy is pending – Suit of husband decreed by the trial Court – Marriage declared as null & void – Held – In cross-examination of the wife and her mother, they had admitted that she has no issue and she has denied to be treated for it – Wife not ready for medical examination on expenses of the husband – Adverse inference drawn against the wife – Held – After appreciation and marshalling of evidence of wife and her mother, it is clear that wife is impotent – Judgment & decree of trial court confirmed – Appeal by wife dismissed: *Rajkunwar (Smt.) Vs. Bakhat Singh, I.L.R. (2016) M.P. 2308 (DB)*

– Section 12(1)(d) – See – Evidence Act, 1872, Section 112: *Sandhya Gupta (Smt.) Vs. Lakhendra Gupta, I.L.R. (2018) M.P. 2440*

HINDU MINORITY AND GUARDIANSHIP ACT (32 OF 1956)

– Section 6 – See – Constitution – Article 226: *Anushree Goyal Vs. State of M.P., I.L.R. (2020) M.P. 1565*

– Section 6 – See – Constitution – Article 226: *Madhavi Rathore (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2453*

– Section 6 – Custody of Minor Child – Held – In case of a male Hindu child, the custody shall be with mother ordinary upto age of five years: *Roshini Choubey Vs. Subodh Gautam, I.L.R. (2019) M.P. 1003 (DB)*

– Section 8(1) & (2) – Voidable Sale – Held – Where property belonging to minor has been sold without seeking permission from Court, then it voidable because a discretion has been given to minor, either to challenge the sale deed or accept the same: *Godhan Singh Vs. Sanjay Kumar Singhai, I.L.R. (2020) M.P. *4*

– Section 8(1) & (2) and Court Fees Act (7 of 1870), Section 7(iv)(c) & 7(v)(a) – Property of Minor – Ad-valorem Court Fees – Held – If land belonging to minor was sold by his father/ guardian without permission from Court, in violation of Section 8(1) & (2) of the Act of 1956, and if such minor seeks declaration that sale deed is null & void, then minor is not required to pay Ad-valorem Court fees u/S 7(iv)(c) but he has to pay Court Fees as per second proviso to Section 7(v)(a) of the Act of 1870 – Impugned order quashed – Petition allowed: *Godhan Singh Vs. Sanjay Kumar Singhai, I.L.R. (2020) M.P. *4*

– Section 8(2) – Permission from Court – Held – Minor cannot be a signatory to sale deed, it has to be executed by his guardian – Minor cannot give his consent therefore in order to protect his interest, Section 8(2) provides for obtaining permission from Court: *Godhan Singh Vs. Sanjay Kumar Singhai, I.L.R. (2020) M.P. *4*

HINDU SUCCESSION ACT (30 OF 1956)

– Section 6 – Share in Coparcenary Property – Ancestral Property – Partition – Claim of Share – Trial Court held the suit property as coparcenary property and held that plaintiff and defendant No. 1 are entitled to succeed the same as surviving coparceners in the family by way of survivorship as per Section 6 of the Act of 1956, irrespective of the fact of partition – Appeal – Held – In the matters of joint family property, under the Mitakshara Hindu School, Supreme Court has held that property held by joint hindu family are in collective ownership by all the coparceners – In the present case, the suit property lost its ancestral character after its partition and had become self acquired property – Judgment of trial Court set aside – Suit dismissed – Appeal allowed: *Visnushankar (Since dead) Vs. Girdharilal, I.L.R. (2018) M.P. 1174*

– Section 6(5) – Applicability – Held – Section 6(5) clearly stipulates that "nothing contained in this section shall apply to a partition which has been effected before 20.12.2004" – Since partition took place on 21.11.2007, therefore Section 6 of the Act of 1956 would apply: *Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi, I.L.R. (2020) M.P. 914*

– Section 14 – See – Hindu Women's Right to Property Act, 1937, Section 3(3): *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

– Section 15 & 16 – See – Civil Procedure Code, 1908, Order 41 Rule 27: *Ramkuriya Bai (Smt.) Vs. Smt. Kachra Bai (Dead), I.L.R. (2017) M.P. 656*

– Section 22 – Right of Pre-emption – Held – Original owner neither died intestate nor original plaintiff is class I heir of deceased – Plaintiff and respondents obtained possession of their respective shares as per Will of deceased, thus respondent became the absolute owner of his share – Appellant has no right to claim right of pre-emption – Appeal dismissed: *Kailashchandra (Dr.) Vs. Damodar (Deceased) Through LRs., I.L.R. (2019) M.P. 2327*

– Section 22 and Succession Act, Indian (39 of 1925), Section 127 – Held – As per section 127 of Act of 1925, any clause in a 'Will' which is contrary to Section 22 of Act of 1956, is void – Clause of the 'Will' creating right of pre-emption in favour of appellant is contrary to Section 22 of Act of 1956 – Appellant cannot claim any right in disputed property on basis of such void condition/clause which is not enforceable in law – Appeal dismissed: *Kailashchandra (Dr.) Vs. Damodar (Deceased) Through LRs., I.L.R. (2019) M.P. 2327*

HINDU UNDIVIDED FAMILY

– Burden of Proof & Presumption – Held – To establish existence of HUF, burden heavily lies on plaintiff to not only show jointness of property but also jointness of family and jointness of living together – No material to show that properties belonged to HUF – Merely because business is joint would not raise presumption about Joint Hindu Family – Contents of documents and written statement only goes to show that the property was treated to be a joint property – No clear cut admission regarding existence of HUF – Plaintiff failed to establish fact of HUF – Appeals dismissed: *Bhagwat Sharan (Dead Thr. Lrs.) Vs. Purushottam, I.L.R. (2020) M.P. 1795 (SC)*

HINDU WOMEN'S RIGHT TO PROPERTY ACT (18 OF 1937)

– Section 3(3) and Hindu Succession Act (30 of 1956), Section 14 – Female Hindu – Right in Property – Held – Under Act of 1937, a female hindu was having limited rights but on commencement of Act of 1956, her limited rights has ripen into full rights – Prior to riping of full rights, she had no right to alienate the estate except for necessity for benefit of estate – In present case, relinquishment done prior to 1949, which she could not have done due to her limited rights – As she expired during pendency of appeal, parties will be at liberty to establish their claim over her property in separate proceedings – Appeal dismissed: *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

HOMOEOPATHY CENTRAL COUNCIL ACT (59 OF 1973)

– Section 12(A) and Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and Attached Hospitals) Regulations, 2013 – Clause 3(9) – Petition against the order passed by Government of India declining permission to petitioner institute for making admissions to BHMS course for academic session 2016-17 – Held – The Central Council found various deficiencies in the College for which show cause notice was issued – Despite grant of opportunity of being heard, petitioner college did not appear and also failed to rectify the deficiencies pointed out in the show cause notice – The deficiencies and shortcomings found were serious in nature which would adversely affect the ability of college to provide quality medical education in the field of Homoeopathy and which would render the college to fall short of the requirements of minimum standards fixed by the 1973 Act and 2013 Regulations – Petitioner college failed to rectify and cure the deficiencies by the statutory fixed dead line and even later did nothing to cure such deficiencies – Impugned order neither suffers from any illegality nor for want of jurisdiction – Petitions dismissed: *Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India, I.L.R. (2017) M.P. 1379 (DB)*

HOMOEOPATHY CENTRAL COUNCIL (MINIMUM STANDARDS OF REQUIREMENT OF HOMOEOPATHIC COLLEGES AND ATTACHED HOSPITALS) REGULATIONS, 2013

– Clause 3(9) – See – Homoeopathy Central Council Act, 1973, Section 12(A): *Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India, I.L.R. (2017) M.P. 1379 (DB)*

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IDENTIFICATION OF PRISONERS ACT (33 OF 1920)

– Section 4 & 5 – Magisterial Order & Powers of Police – Held – Section 5 is not mandatory but is directory – No hard and fast rule that in every case, there should be a Magisterial Order for lifting fingerprints of accused – Police are entitled to take fingerprints in absence of magisterial order: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

INCENTIVE POLICY FOR DEVELOPMENT OF SMALL HYDRO POWER PROJECTS IN MADHYA PRADESH, 2006

– Clause 9 – See – M.P. Electricity Regulatory Commission (Co-Generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2008, Regulation 1.40 & 1.41: *Ascent Hydro Projects Ltd. (M/s.) Vs. M.P. Electricity Regulatory Commission, I.L.R. (2018) M.P. 1415*

INCOME TAX ACT (43 OF 1961)

– Section 2(15) & 12-A and Finance (No. 2) Act (23 of 2004) – Amendment – Insertion of Section 12AA(3) – Registration Certificate – Powers of Commissioner – In 1999, Commissioner of Income Tax issued registration certificate to appellant which was subsequently cancelled in 2002 – Held – Commissioner had no power and jurisdiction to cancel the registration certificate once granted by him u/S 12-A of the Act of 1961 till such power was expressly conferred on the Commissioner for the first time by enacting Sub-Section (3) in Section 12AA only with effect from 01.10.2004 – Such amendment was not retrospective but was prospective in nature – Such power could not be exercised before date of enforcement of amendment – Impugned order set aside – Appeal allowed: *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. Commissioner of Income Tax, Gwalior, I.L.R. (2018) M.P. 1039 (SC)*

– Section 12-A and General Clauses Act (10 of 1897), Section 21 – Held – Order passed by the Commissioner u/S 12-A of the Act of 1961 are neither legislative nor executive which can be modified or rescinded by applying Section 21 of the Act of 1897 – Order passed by Commissioner are quasi judicial orders and Section 21 of the Act of 1897 has no application to vary or amend or review a quasi judicial order – Further held – An order passed by the Commissioner u/S 12-A of the Act of 1961 does not fall in the category of "Orders" as mentioned in Section 21 of the General Clauses Act: *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. Commissioner of Income Tax, Gwalior, I.L.R. (2018) M.P. 1039 (SC)*

– Section 12-A & 80-G – See – Criminal Procedure Code, 1973, Sections 156(3) & 482: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Section 28(iv) – Profits and Gains of Business or Profession – Waiver of Loan – Whether Income of Debtor – Taxable Income – Held – Perusal of Section 28(iv) prima facie shows that taxable income will be one which arise from business or profession but to invoke provisions of Section 28(iv) of the Act of 1961, the benefit

received has to be in some other form rather than in shape of money – Respondents received cash amount due to waiver of loan which cannot be taxed – Appeal dismissed: *The Commissioner Vs. Mahindra & Mahindra Ltd. Thrg. M.D., I.L.R. (2018) M.P. 2309 (SC)*

– Section 32 and Income Tax Rules, 1962, Appendix I, Item III sub-item 3(ii) – Whether special rate of 30% depreciation is allowable in the case of motor vehicles used by assessee in the business of civil construction – Held – No – Such depreciation is allowable only in case of tour operator or travel agent using his vehicles in providing transportation service to tourist or vehicles used in assessee's business of transportation of goods on hire and not on vehicles used in some other non-hiring business – The test is the use of vehicles in the business of transportation of the assessee – In the present case the assessee being in civil construction business using his vehicles for transporting earth to facilitate laying of roads cannot be said to be in business of hiring out his trucks for removal and transportation of earth as they are only sub-process of his main business of laying of roads – Appeal dismissed: *Anamay Construction Co. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 895 (DB)*

– Section 41(1) – Profits Chargeable to Tax – Applicability – Held – Section 41(1) does not apply in present case since it deals with cessation of liability other than trading liability – Waiver of loan does not amount to cessation of trading liability – Respondent had not claimed any deductions u/S 36(1)(iii) of the Act of 1961 qua the payment of interest in any previous year: *The Commissioner Vs. Mahindra & Mahindra Ltd. Thrg. M.D., I.L.R. (2018) M.P. 2309 (SC)*

– Section 132 & 246, Criminal Procedure Code, 1973 (2 of 1974), Section 195 and Penal Code (45 of 1860), Sections 191, 193 & 200 – Complaint Against Assessee – Competent Authority to File Complaint – Deputy Director of Income Tax (Investigation) Bhopal lodged complaint before CJM Bhopal – Held – Deputy Director cannot be construed to be an authority to whom appeal would ordinarily lie from decisions/orders of the Income Tax Officers involved in search proceedings, thus not empowered to lodge complaint against assessee – Complaint unsustainable in law having been filed by authority, incompetent in terms of Section 195 of Cr.P.C. and hence quashed – Appeal allowed: *Babita Lila Vs. Union of India, I.L.R. (2017) M.P. 2587 (SC)*

– Sections 142(1), 147 & 148 and Constitution – Article 226 – Reassessment Proceeding – Reasons & Formation of Believe – Writ Jurisdiction – Petitioner's assessment was reopened and notice issued – Held – It is not a case of mere suspicion, competent authority having information and reasons to believe to reopen assessment – Reasons communicated to petitioner and objection have been properly dealt with vide detailed and speaking order – Sufficiency or insufficiency for formation of reasons

to believe cannot be considered under exercise of writ jurisdiction under Article 226 of Constitution – Assessee has to participate in re-assessment proceedings and to put forth its stand to satisfy the Assessing Officer that no escapement of income has taken place – No reason to interfere with impugned notice – Petition dismissed: *Etiam Emedia Ltd. (M/s.) Vs. Income Tax Officer-2 (2), I.L.R. (2019) M.P. *16 (DB)*

– Section 142(2A) – Approval for Special Audit – Opportunity of Hearing – Held – Principal Commissioner of Income Tax granted two opportunities to petitioner assessee vide show cause notice dated 30.11.17 & letter dated 11.12.17 before making reference to special Auditor – Sufficient compliance of the proviso to Section 142(2A) of the Act of 1961 has been made – Petitions dismissed: *Ramswaroop Shivhare Vs. Dy. Commissioner of Income Tax Central, Bhopal, I.L.R. (2018) M.P. *96 (DB)*

– Sections 143(1), 147 & 148 – Assessment and Reassessment – Notice issued u/S 148 of the Act of 1961 for re-opening of assessment for the year 2009-10 – Petitioner contended that at relevant point of time he was on deputation in another department, so no role in decision making process – Held – This aspect of the matter has been considered in detail by the Revenue as various stages of Tender process has taken place before deputation– Contractors were short-listed till stage of Technical Bid – Key role in decision making process, so petitioner cannot be exonerated of the charges leveled on ground of deputation – Contention turned down – Petition dismissed: *Malay Shrivastava Vs. The Deputy Commissioner, Income Tax, I.L.R. (2017) M.P. 39 (DB)*

– Sections 143(1), 147 & 148 – Assessment and Reassessment – "Reasons to believe" – The expression "reasons to believe" cannot be read to say that Assessment Officer should have finally ascertained the effect by legal evidence or conclusion but only consideration at this stage is that whether there was reasonable material available to issue notice u/S 148 of Income Tax Act for reopening of assessment – The enquiry is still in progress, so it is not appropriate to hold that material produced is enough or not as the sufficiency or correctness of the material is not to be looked into at this stage by the Writ Court and the Assessing Officer has to take its own decision on the matter – Petition dismissed: *Malay Shrivastava Vs. The Deputy Commissioner, Income Tax, I.L.R. (2017) M.P. 39 (DB)*

– Sections 143(1), 147 & 148 – Constitution – Article 226 – Assessment & Reassessment – Invoking of Writ Jurisdiction – Alternate remedy – Whether Writ Petition under Article 226 of the Constitution is maintainable at the stage of assessment or re-assessment proceedings under the Income Tax Act, 1961 – Held – At the stage of assessment or reassessment proceedings the assessee cannot be permitted to invoke Writ Jurisdiction of the High Court at the first instance without exhausting the statutory remedy available under the Income Tax Act, 1961: *Malay Shrivastava Vs. The Deputy Commissioner, Income Tax, I.L.R. (2017) M.P. 39 (DB)*

– Section 143(2) – Notice – Held – No notice u/S 143(2) was ever issued by the department – Tribunal and High Court rightly concluded that issuance of notice u/S 143(2) was a statutory requirement and non-issuance thereof is not curable defect – Appeals dismissed: *Commissioner of Income Tax Vs. Laxman Das Khandelwal, I.L.R. (2020) M.P. 273 (SC)*

– Section 145 & 194-A(3)(ix)(ix-a) – Computation of Income – Held – The interest received by an assessee on any compensation or on enhanced compensation as the case may be, shall be deemed to be the income of the previous year in which it is received and if total interest exceeds Rs. 50,000 then Insurance Company has to deduct TDS: *National Insurance Co. Ltd. Vs. Smt. Ram Khiloni alias Khiloni, I.L.R. (2020) M.P. 696*

– Section 148 – Re-assessment – Grounds – Notice issued to respondent and his assessment was re-opened – Held – Assessment has been done on basis of notings found in the books of third person – Apex Court concluded that incriminating materials in form of random sheets, loose papers, computer prints, hard disc and pen drive are inadmissible in evidence as they are in the form of loose papers – In present case, entries found during search and seizure which are on loose papers, are being made basis to add income of respondent – Appeal was rightly dismissed by the Tribunal – Appeal dismissed: *The Principal Commissioner of Income Tax-I Vs. Shri Pukhraj Soni, I.L.R. (2019) M.P. *29 (DB)*

– Section 194-A(3)(ix)(ix-a) – See – Motor Vehicles Act, 1988, Section 166: *National Insurance Co. Ltd. Vs. Smt. Ram Khiloni alias Khiloni, I.L.R. (2020) M.P. 696*

– Sections 245C (1B), (1C) & 245D (2C) – Clause (ii) of sub-Section (1B) of Section 245C of the Act – Where an assessee has furnished return of income and applies for settlement of his case, one has to calculate his total income for the purpose of the said provision by aggregating the total income returned and the income disclosed in the application – Applicant's liability to pay additional tax would be the amount of tax calculated on such total income minus the amount of tax calculated on the total income returned – As respondent no. 1 had not paid self-assessment tax on the income calculated by him in return filed u/s 153-A, the application for settlement was not valid – Petition allowed: *Commissioner of Income Tax (Central) Vs. M/s. Keti Construction Ltd., I.L.R. (2016) M.P. 1315 (DB)*

– Section 254(2) – Appeal – Limitation – Amendment – Appeal preferred by petitioner dismissed in 2015 for want of prosecution – Application u/S 254(2) was also dismissed for want of limitation – Held – Before amendment of 2016, limitation prescribed u/S 254(2) was four years, which was later reduced to six months vide

amendment – New law of limitation providing a shorter period cannot certainly extinguish a vested right of action and cannot be operated retrospectively as was done in present case – Impugned order quashed – Petition allowed: *District Central Co-op. Bank Ltd., Raisen Vs. Union of India, I.L.R. (2017) M.P. *154 (DB)*

– Section 263 – Suo Motu Power of Revision of Assessment – Appellant filed return whereby he was assessed to tax – Later respondent issued notice proposing to invoke suo motu power of revision of assessment on the ground that order of assessment was erroneous and prejudicial to interest of revenue – Appellant filed appeal before Tribunal whereby the same was dismissed – Challenge to – Held – Assessing Officer though recorded in note sheet that reply of appellant is not satisfactory and did not explain all facts, even then, no enquiry was conducted by him and he accepted the claim of assessee – Tribunal rightly concluded that there was no enquiry conducted nor there was any application of mind by the Assessing Officer – No substantial question of law arising for adjudication in view of the fact of lack of proper enquiry by Assessing Officer – Appeal dismissed: *Nagal Garment Industries Pvt. Ltd. (M/s.) Vs. Commissioner of Income Tax-I, I.L.R. (2017) M.P. 2011 (DB)*

– Section 264 – Revision – Maintainability – Deposit of Rs. 16,31,700 in petitioner's saving account – Notice issued – Ex-parte assessment done and recovery proceeding initiated – Petitioner filed revision u/S 264 of the Act of 1961 which was dismissed – Challenge to – Held – Despite several opportunities, petitioner did not avail any opportunity to account for the said deposit – Notice to pay penalty was also issued which was also not availed by him – It is only when penalty order was passed and recovery proceeding started, revision was filed – Authority has passed a reasoned order considering the law laid down by the Apex Court, cannot be said to be a cryptic order – Revision rightly dismissed – Petitioner himself invited such troubles by not responding to the notices issued to him by the Assessing Officer – No merit in petition and is dismissed: *Rohit Agrawal Vs. The Principal Commissioner of Income Tax-II, I.L.R. (2017) M.P. 1857 (DB)*

– Section 292BB – Scope – Held – Scope of provisions of Section 292BB is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee – It is only the infirmities in the manner of service of notice that the Section seeks to cure – Section does not save complete absence of notice itself – At least notice must have emanated from the department: *Commissioner of Income Tax Vs. Laxman Das Khandelwal, I.L.R. (2020) M.P. 273 (SC)*

– Rule 53 of Schedule II – Contents of Proclamation – Reserve Price of Property put for auction – Hearing of debtor – There is no requirement of giving opportunity to the debtor before valuation is made and reserve price is fixed or to

consider the alternate valuation filed at the instance of debtor: *Centauto Automotives Pvt. Ltd. (M/s.) Vs. Union Bank of India, I.L.R. (2016) M.P. 1693 (DB)*

INCOME TAX (CERTIFICATE PROCEEDINGS) RULES, 1962

– Rules 60, 61, 62 & 63 – Recovery of Decreetal Amount – Absolute Sale – Maintainability of Petition – Locus – Held – Rule 63(1) provides that where no application is made for setting aside the sale or where such an application is made and is disallowed, the Tax Recovery Officer shall, if full amount of purchase money has been paid, make an order confirming the sale to be absolute – In the instant case, judgment debtor has not filed any objection to set aside the sale, thus petitioner (auction purchaser) has a right accrued in his favour – Petitioner has the locus to challenge the impugned order – Petition maintainable: *Dinesh Agarwal & Associates (M/s.) Vs. Pawan Kumar Jain, I.L.R. (2017) M.P. 2142 (DB)*

INCOME TAX RULES, 1962

– Appendix I, Item III sub-item 3(ii) – See – Income Tax Act, 1961, Section 32: *Anamay Construction Co. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 895 (DB)*

INDIAN RAILWAY MEDICAL MANUAL (IRMM), VOLUME 1, 2000 (III EDITION)

– Para 504, 532(i) & 539(a) – See – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Section 47: *General Manager, Union of India Vs. Moses Benjamin, I.L.R. (2017) M.P. 1110 (DB)*

INDIAN RED CROSS SOCIETY BRANCH COMMITTEE RULES, 2017

– Schedule III, Clause 2(d) and Constitution – Article 226/227 – Chairman – Removal – Validity – Held – In agenda of meeting, no such proposal for removal of Chairman (petitioner) – Decision for removal cannot be taken – Further, before the enquiry report was submitted, petitioner was suspended by majority of votes – No such procedure/mechanism is available under Rules of 2017 – Conduct of respondents is arbitrary and contrary Rules of 2017: *Ashutosh Rasik Bihari Purohit Vs. The Indian Red Cross Society, I.L.R. (2019) M.P. 1693*

– Schedule III, Clause 2(d) and Constitution – Article 226/227 – Chairman – Suspension of Power – Validity – Held – Rules of 2017 nowhere provides that

Chairman of State Level Society can be placed under suspension and its power can be suspended by respondent Society – Order passed by respondents without competence & jurisdiction – Order is illegal: *Ashutosh Rasik Bihari Purohit Vs. The Indian Red Cross Society, I.L.R. (2019) M.P. 1693*

– Schedule III, Clause 2(d) and Constitution – Article 226/227 – Principle of Natural Justice – Opportunity of Hearing – Held – Regarding date of meeting, no proof of service of notice to petitioner – No opportunity of hearing granted – Order passed without following the principle of audi alteram partem – Clear violation of principle of natural justice – Impugned orders set aside – Petition allowed: *Ashutosh Rasik Bihari Purohit Vs. The Indian Red Cross Society, I.L.R. (2019) M.P. 1693*

INDIAN TELEGRAPH RIGHT OF WAY RULES, 2016

– See – Nagar Palika (Installation of Temporary Tower/Structure for Cellular Mobile Phone Service) Rules, M.P., 2012: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

INDORE DEVELOPMENT PLAN, 2021

– See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 24 & 74: *Pradeep Hinduja Vs. State of M.P., I.L.R. (2019) M.P. 339 (DB)*

INDUSTRIAL DISPUTES ACT (14 OF 1947)

– Section 2A – Whether retrospective or Prospective – Limitation to file a dispute – Held – Intention of the legislature to insert the said amendment was to have implication of prospective nature – Prior to 15.09.2010, no limitation was prescribed for filing a dispute, but in view of amended provision, a workman is entitled to file a dispute within three years from the discharge, dismissal, retrenchment or otherwise termination of service or within three years of amendment: *Municipal Council, Guna Vs. Krishna Pal, I.L.R. (2016) M.P. *31*

– Section 2-A & 10 – Limitation – Employee retired on 06.07.12 – After 4 years, in 2016, he filed application u/S 10 of the Act of 1947 challenging his superannuation – Additional Labour Commissioner referred the dispute to Labour Court – Challenge to – Held – Workman in case of discharge, dismissal, retrenchment or otherwise termination of service can directly approach the Labour Court/Tribunal without affecting his rights u/S 10 of the Act – Further held – Section 2-A(3) provides period of limitation only for application u/S 2-A(2) and not for Section 2-A(1) – Present case falls u/S 2-A(1) and is deemed to be an Industrial dispute – Workman can seek reference without any period of limitation – Even otherwise, appropriate government while exercising powers u/S 10 of the Act is not required to adjudicate the dispute, it

is for the Labour Court and tribunal to decide the same – Petition dismissed: *Mahindra Two Wheelers Vs. State of M.P., I.L.R. (2017) M.P. 1865*

– Section 2(A) & 10(1) – Validity of Reference – Existence of Industrial Dispute – Held – Terms of reference is very precise and clearly indicates industrial dispute between workmen and petitioner – Objections raised by petitioner are either issue of law or mixed question of law and facts and comes under the category of incidental, additional or ancillary issues required to be decided by Tribunal – It is discretion of Tribunal either to decide as preliminary issue or while answering terms of reference – Impugned order not liable to be quashed in writ petition under Article 226 of Constitution – Petition disposed of: *Pratibha Syntex Ltd. Vs. State of M.P., I.L.R. (2019) M.P. 542*

– Section 2(k) – "Industrial Dispute" – Definition – Scope – Held – Definition of "industrial dispute" is very wide and includes any dispute or difference between employer and employer or between employers and workmen or even between workmen and workmen, connected with employment or even with non-employment or terms of employment: *Zila Satna Cement Steel Foundry Khadan Kaamgar Union Through Its General Secretary, Ramsaroj Kushwaha Vs. Union of India, I.L.R. (2018) M.P. 2171*

– Sections 2(k), 7, 7A, 10 & 10(1)(d) and Schedule II & III – Contract Labour – Reference – Appropriate Government – Jurisdiction & Powers – Claim for regularization of contract labour on permanent post, whereby appropriate government denied reference to Tribunal – Challenge to – Held – Appropriate government can refer an industrial dispute for adjudication even if it is not covered under Schedule II and III – Appropriate government exceeded its authority and entered into merits of the case – Impugned order set aside – Appropriate government directed to refer the dispute for adjudication before Tribunal – Petition allowed: *Zila Satna Cement Steel Foundry Khadan Kaamgar Union Through Its General Secretary, Ramsaroj Kushwaha Vs. Union of India, I.L.R. (2018) M.P. 2171*

– Section 2(k)/10/25-B(2)(a)(ii)/25-F – See – Service Law: *Municipal Corporation, Jabalpur Vs. The Presiding Officer, Labour Court, Jabalpur, I.L.R. (2018) M.P. 401*

– Sections 2(s), 36(1)(c) & 36(4) – Workmen – Locus – Held – If worker is not a member of any Trade Union, still he can be represented by any other workman employed in industry on basis of authorization – Workman includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute – Further, u/S 36(4), workman can even be represented by legal practitioner with the consent of other party to the proceeding and with leave

of Labour Court/Tribunal: *Pratibha Syntex Ltd. Vs. State of M.P., I.L.R. (2019) M.P. 542*

– Section 9A – Notice of Change of Service Condition – Held – Before making alleged offer to workmen of "folding unit" to work on piece rate or being transferred to work in "dyeing unit", no notice of change in service conditions was given which is a mandatory provision under Section 9A – Further held – Conditions of service do not stand changed either when proposal is made or notice is given but they are affected only when change is actually made – Management circumventing the provisions of Section 9A has effected the change which led to involuntary resignation amounting to retrenchment: *S. Kumars Ltd. (M/s.) Vs. Bherulal, I.L.R. (2018) M.P. 2761*

– Section 9A – Transfer – Not being the condition of service – For effecting it, notice by employer not obligatory: *President, Working Journalist Union Vs. Director, Rajasthan Patrika Pvt. Ltd., I.L.R. (2016) M.P. *19*

– Section 10 – Industrial Dispute – Reference – Limitation – Held – For reference before Labour Court, law of limitation does not apply but there should be a satisfactory explanation for the delay – Labour Court has to examine whether after termination, workman has raised his voice or remained silent and if he remained silent and did not agitate then there is no "Industrial Dispute" – Respondent admitted in cross examination that he did not agitate his termination – In his claim and evidence did not give any explanation in respect of 11 years delay – No "Industrial Dispute" exist between parties – Respondent not entitled for reinstatement – Impugned order set aside – Petition allowed: *Karyapalan Yantri Lok Swastha Vs. Devendra Kumar Panwar, I.L.R. (2019) M.P. *40*

– Section 10 – Limitation – Belated Reference – After departmental proceedings, workman was punished with dismissal from service on 02.12.1992 – Reference was made after 11 years before the CGIT which was allowed and compensation of Rs. 2 lacs was awarded to the petitioner/legal heir, as workman expired during pendency of the case before Tribunal – Employer and Employee both challenged the order of the Tribunal – Held – It is true that in the Act of 1947, no limitation is prescribed for raising an industrial dispute and Limitation Act, 1963 is also not applicable to the reference made under the Act – Further held – Looking to various judgments passed by the Supreme Court, it can safely be concluded that delay is a relevant factor which needs to be considered by Tribunal – In the instant case, reference was made after 11 years from the date of termination and workman was not able to establish that the issue was still alive when the matter was referred – It is also equally settled that "delay defeats equities" – In the instant case, because of such belated reference, inquiry record has become untraceable/unavoidable, therefore,

employer could not produce the same – Supreme Court has held that when delay resulted in material evidence relevant to adjudication being lost or rendered unavailable, delay is fatal – It is well settled that party cannot take benefit of his own wrong – No relief was due to the workman – Award passed by the Tribunal is set aside – Petition filed by the employer is allowed and the one filed by the workman is dismissed: *Union of India Vs. Smt. Shashikala Jeattalvar, I.L.R. (2018) M.P. 692*

– Section 10 – Maintainability of reference – Reference by workman in terms of Section 10 of Industrial Disputes Act, 1947 against his alleged discontinuance – Preliminary objections by employer on maintainability – Labour Court held that the resignation/termination of service of workman can only be decided after conclusion of the case – No patent illegality nor any jurisdictional error in the order – Admission declined: *S. Kumars Ltd. (M/s.) Vs. Jagram Singh, I.L.R. (2016) M.P. *15*

– Section 10 – Reference – Nature & Scope – Held – Order of reference is in realm of an administrative act – Apex Court concluded that in making a reference u/S 10, appropriate government is doing an administrative act and not a judicial or quasi judicial act – Any factual foundation in order of Dy. Labour Commissioner or in reference order will not create any right in favour of any party – Labour Court will be free to adjudicate the matter on its own merits: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 1217 (DB)*

– Section 10 – Rights of Workmen – Increment & HRA – Entitlement – Held – Apex Court concluded that employee classified as permanent employee are not entitled for increment and other benefits like regular employees – They are only entitled for minimum wages and allowance as per fixed schedule of pay scale: *Madan Singh Dawar Vs. Labour Commissioner, M.P., I.L.R. (2019) M.P. *17*

– Section 10 – Termination – Retrenchment Compensation – Held – Since it is established that respondent worked for 240 days in petitioner's establishment and before termination retrenchment compensation was not paid, Rs. 50,000 compensation granted in lieu of reinstatement – Impugned order modified: *Karyapalan Yantri Lok Swastha Vs. Devendra Kumar Panwar, I.L.R. (2019) M.P. *40*

– Section 10 & 33-C(2) and Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) – Recovery of Arrears of Wages – Reference – Validity – Held – Whether particular workman is employee of particular employer can be decided by making reference u/S 10 of the Act of 1947 and not by making reference u/S 17(2) of the Act of 1955, thus reference made u/S 17(2) is incompetent – Impugned order set aside – Labour Commissioner is further to make reference to Labour Court for determination of question of existence of employer-employee relationship between

parties and then go to decide entitlement of R-3 to receive arrears – Petitions allowed: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 565*

– Section 11-A – Power of the Tribunal – In a departmental enquiry, workman/ respondent was ordered to be dismissed from service – Tribunal converted the punishment of dismissal into compulsory retirement holding that workman having rendered 15 years of service, punishment of dismissal is not justified and at the same time to enable the workman earn his pension – Held – Insertion of Section 11A to the Act confers power to the Tribunal to re-appreciate the evidence and also interfere on the quantum of punishment – Tribunal can examine as to whether the finding of misconduct recorded by the employer is fair and reasonable and even if such finding is in favour of the employer, Tribunal can interfere in the order of punishment – This jurisdiction is not vested in the Writ Court or Civil Court – No illegality done by Tribunal while interfering with the quantum of punishment: *State Bank of India Vs. Vishwas Sharma, I.L.R. (2017) M.P. 877 (DB)*

– Section 11-A – Workman was dismissed from service after due Departmental Enquiry on the charge for his misbehavior with his Superior Officer and Security Guard – Labour Court set aside the order and directed re-instatement with full back wages – Held – Scope of judicial interference in domestic enquiry is limited – The court is not obliged to sit as an appellate authority to reassess the evidence led in domestic enquiry – The interference can be made in findings only when the same are based on no evidence or when they clearly perverse – Punishment can be interfered with only when it is shockingly disproportionate – Reinstatement can not be ordered where employee has abused his position and committed the act which resulted into forfeiting the confidence of employer – Employer has successfully established the allegation relating to incident dt. 1.12.2005 and objective facts on the basis of which loss of confidence is pleaded – Punishment can not be held to be harsh and excessive – Impugned order is set aside: *Crompton Greaves Ltd. Vs. Sharad Maheshwari, I.L.R. (2016) M.P. 991*

– Section 16 and Constitution – Article 226 – Termination of service of the petitioner/medical representative – Petitioner refused to participate in the departmental proceedings – The respondent/authorities had no option but to proceed ex parte against the petitioner and as the charge of deliberate and conscious non-compliance by the petitioner is admitted, no fault can be found in the order of termination of the petitioner – The impugned award by the Labour Court, whereby the orders of termination of the service of the petitioner have been upheld, suffers from no illegality, perversity or material irregularity – Writ petition challenging the award accordingly dismissed: *A.K. Khare Vs. Ms. Indian Drugs & Pharmaceuticals Ltd., Gurgaon, I.L.R. (2016) M.P. 1266*

– Section 17-B – Appellants were reinstated during the pendency of writ petition filed against the award of labour Court but only last pay drawn as per Section 17-B is being paid and not regular salary – Held – Section 17-B will apply only when during pendency of matter the employee is not reinstated and therefore by way of subsistence allowance he is paid full wages last drawn – However in case employee is reinstated, the concept of last wages drawn will not apply – The employer has to pay wages as prescribed under the law for the work which employee is discharging: *Durjan Ahirwar Vs. State of M.P., I.L.R. (2016) M.P. 8 (DB)*

– Section 17-B – Payment of full wages to workman during pendency of proceedings before High Court or Supreme Court – Facts – Central Government Industrial Tribunal cum-Labour Court directing for reinstatement of respondent/ workman with back wages from date of termination – Petition against – Operation of award was stayed subject to compliance of provisions u/S 17-B of Industrial Disputes Act, 1947 – Petitioner bank depositing entire back wages of Rs. 3,82,554/- – Application by petitioner bank seeking direction for refund of the amount paid towards back wages – Grounds – Provisions u/S 17-B of Industrial Disputes Act, 1947 has been misconstrued – Held – Section 17-B of Industrial Disputes Act, 1947 makes specific provisions that with the institution of proceedings in the High Court or Supreme Court by the employer it entails the liability to pay wages last drawn by the workman subject to the condition that workman is not gainfully employed and an affidavit to that effect is filed - In this case the employer has deposited entire back wages but Section 17-B of Industrial Disputes Act, 1947 creates no bar for whole or partial compliance of the award – No direction for refund can be given nor direction for adjusting the amount towards last wages drawn to be paid during pendency of petition can be given – Petitioner can recover the said amount by taking recourse to law if it succeeds in the petition – I.A. disposed of: *Central Bank of India Vs. Shri Dinesh Kumar Kahar, I.L.R. (2017) M.P. 812*

– Section 25-B(2)(a) and Minimum Wages Act (11 of 1948), Section 13(1)(b) – Computation of duty period – National holidays & weekly rests are to be treated as duty period: *Deputy Director, Nagariya Prashasan Vs. Satya Narain, I.L.R. (2016) M.P. 407*

– Section 25-F – Back wages – Refused while reinstating – Employee failed to prove that he was unemployed, during period of retrenchment – Employee, not entitled for back wages: *Deputy Director, Nagariya Prashasan Vs. Satya Narain, I.L.R. (2016) M.P. 407*

– Section 25-F – Compensation in-lieu of Re-instatement – Quantum – Held – Looking to 12 yrs. period of service of workman who was working in substantive capacity and does not suffer from any blemish or taint in his career, quantum of

compensation awarded enhanced from Rs. 2 lacs to 4 Lacs: *Arun Kumar Dixit Vs. Scindia Kanya Vidhyalay, I.L.R. (2019) M.P. 980*

– Section 25-F – Termination – Petitioner/workman was appointed on regular vacancy of fire-brigade driver on 10.04.2001 by the respondent/employer – In May 2005, he was terminated by oral order without following the pre-requisite of Section 25-F of Industrial Disputes Act, 1947 – Reference made by appropriate government in this regard to Labour Court was answered against the petitioner/workman – Held – If workman has proved that he had completed 240 days in the last preceding 12 months, the burden of proof thereafter shifted to the employer to establish otherwise – Employer failed to discharge this burden by failing to produce the record in its possession pertaining to the entire service tenure of workman – Petition allowed: *Sakir Navi Quareshi Vs. The Municipal Council, Gohad, I.L.R. (2017) M.P. *41*

– Section 25-F(a) & (b) – Retrenchment Compensation & Compensation in-lieu of Re-instatement – Held – Loss of confidence of employer in the workman because of moral turpitude, abolishing of post on which workman was working prior to termination and mere technical breach of Section 25-F(a) & (b) where substantial compliance was made, are sufficient grounds available to take alternative/substitutive course of compensation in lieu of re-instatement and back wages – Employer cannot be compelled to re-instate and retain an employee in whom employer does not repose confidence – Petition by workman dismissed: *Arun Kumar Dixit Vs. Scindia Kanya Vidhyalay, I.L.R. (2019) M.P. 980*

– Section 25-F(a) & (b) – Retrenchment – Validity – Held – Retrenchment compensation was paid after 6 days of termination, cannot be said to be breach of Section 25-F(b) – Termination is not invalid: *Arun Kumar Dixit Vs. Scindia Kanya Vidhyalay, I.L.R. (2019) M.P. 980*

– Section 25-N & 33-A – Retrenchment – Change in Conditions of Service – Held – Retrenchment does not fall under the term "change in conditions of service" keeping in view the Schedule IV of the Act of 1947, thus application u/S 33-A was not tenable – Merely because reference was pending which was altogether on different subject, it does not mean that employer cannot terminate services of employee subject to provisions of the Act – Industrial Tribunal transgressed its jurisdiction in entertaining the application u/S 33-A of the Act: *AVTEC Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 430 (DB)*

– Section 25-N & 33-A – Retrenchment – Held – An employer, not having funds to continue with the industry, cannot be forced to continue with it – He has a right to file application u/S 25-N of the Act to retrench the workers subject to provisions of the Act – Petition allowed: *AVTEC Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 430 (DB)*

– Section 25-N & 33-A and Industrial Relations Act, M.P. (27 of 1960) – Maintainability – Held – Vide notification dated 26.09.2019, provisions of Act of 1960 have been made applicable in Engineering Industries – Application filed u/S 33-A of the Act of 1947 in respect of proceedings initiated by employer u/S 25-N of the Act is not maintainable – Impugned order set aside – Petition allowed: *AVTEC Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 430 (DB)*

– Section 29 & 33(c)(2) – Non-Compliance of Award – Sanction for Prosecution – Labour Court awarded increment and HRA to employee u/S 33(c)(2) and on non-compliance of the same, sanction of prosecution against petitioner granted – Held – Scope of Section 33(c)(2) is very limited where Labour Court act as executing Court – Apex Court concluded that application u/S 33(c)(2) of ID Act is maintainable only when workman right has been established in proceedings u/S 10 of the Act – In present case, right of employee not established by Labour Court in proceedings u/S 10 of the Act and for the first time award of increment and HRA passed in proceeding u/S 33(c)(2) of the Act – Impugned order unsustainable in law and is set aside – Petition allowed: *Madan Singh Dawar Vs. Labour Commissioner, M.P., I.L.R. (2019) M.P. *17*

– Section 29 & 34 – Breach of Award – Criminal Prosecution – Grounds – Held – Satisfaction of authority and fulfillment of ingredients of offence together with an element of mens rea are per-requisites before subjecting a person to criminal prosecution – Without addressing on relevant facts, respondent jumped to conclusion of breach of award and initiation of criminal proceedings – Respondent acted in a surreptitious manner with biased mind – Impugned order set aside – Petition allowed: *Pfizer Ltd. Vs. State of M.P., I.L.R. (2019) M.P. 2507*

– Section 33-C(1) – Exercise of Powers – Held – Powers u/S 33-C(1) can be exercised only on application submitted by workman himself – Act of 1947 does not confer power to appropriate government to exercise suo motu or on an application filed by other co-workers objecting the benefit payable to workman/applicant to recall its order already passed u/S 33-C(1) of the Act of 1947: *Bhartiya Drugs and Chemicals Shramik Karmchari Parishad Vs. State of M.P., I.L.R. (2018) M.P. 2737*

– Section 33-C(1) – Suo Motu Recall of Order – Held – In the Act of 1947, there is no provision which gives power to respondent/Labour Commissioner to recall its own order suo motu – Labour Commissioner becomes functus officio after passing order – In present case, authority once has exercised his powers has subsequently withdrawn himself from exercising power further for execution of RRC and relegated the workmen to Labour Court – Action of Commissioner is condemned – Impugned order quashed – Labour Commissioner directed to get RRC executed – Petitions allowed: *Bhartiya Drugs and Chemicals Shramik Karmchari Parishad Vs. State of M.P., I.L.R. (2018) M.P. 2737*

– Section 33 (C)(2) – Back wages – Principle of "No Work No Pay" – Petitioner challenging the order to pay Rs. 2,11,002 as arrears of wages from 01/01/2002 to 09/07/2006 – After completion of 30 years of service, Respondent was retired on 29/12/01 – Order of premature retirement was set aside by High Court and he was directed to be reinstated in service with consequential benefits – Respondent gave joining on 10/07/06 but wages were not paid – Industrial Court directed to petitioner to pay back wages – Held – Retirement order of 29/12/01 was challenged in the year 2005, after period of 4 years – He cannot claim wages for the said period on the principle of "No Work No Pay" – Impugned award modified to the extent that respondent be paid wages from the date when he gave joining on 10/07/06 – Petition partly allowed: *State of M.P. Vs. Bapulal, I.L.R. (2017) M.P. *84*

– Section 33(C)(2) – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(2): *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 1217 (DB)*

– Sections 33(1) & 9 A – Transfer during pendency of industrial dispute before authorities – Protection u/S 33(1) of the Act 1947 not available unless established that the transfer is the condition of service: *President, Working Journalist Union Vs. Director, Rajasthan Patrika Pvt. Ltd., I.L.R. (2016) M.P. *19*

– Schedule 5, Clause V – Unfair Labour Practice – Dismissal – Held – Punishment imposed was discriminatory, arbitrary and amounts to victimization of class IV employee without there being any justification – Clause (a), (b), (d) & (g) of Clause V "unfair labour practice" clearly attracted: *Union Bank of India Vs. Vinod Kumar Dwivedi, I.L.R. (2020) M.P. 2656*

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, M.P., 1963

– Part-II, Rule 11(c) – Resignation – Authenticity – Held – There is neither notice period nor any reasons stated in the alleged letter of resignation – Letter has no mention of date of acceptance – Workman was subjected to illegal conditional offer of change of service conditions and thereafter was made to sign the letter of resignation with blank spaces of name, father's name, card number etc – Tribunal rightly awarded reinstatement with backwages – Petition dismissed: *S. Kumars Ltd. (M/s.) Vs. Bherulal, I.L.R. (2018) M.P. 2761*

INDUSTRIAL RELATIONS ACT, M.P. (27 OF 1960)

– Section 17, Industrial Relations Rules, M.P. 1961, Rule 16 & 17 – Status of representative union – Petitioner union was enjoying the status of representative

union – Respondent's application seeking status in place of petitioner union allowed by Registrar Trade Union – In appeal Industrial Court set aside the order but directed the Registrar to obtain appropriate application under Section 17 read with Rule 17 from the respondent No. 2 and to pass order after hearing and physical verification of the members – Held – Industrial Court was not obliged to direct the Registrar to obtain fresh application as per Section 17 of the Act – Thus, Industrial Court travelled beyond the statute – Direction of Industrial Court is set aside – However, liberty is reserved to the respondent No. 2 to prefer appropriate application in accordance with law – Petition is allowed: *J.K. Tyre Banmore Kamgar Sangh Vs. Registrar, Trade Union/Representative Union, I.L.R. (2016) M.P. 1629*

– Section 22 – Interpretation of Statute – Section 22 provides for an appeal to the Industrial Court from the order passed by the Registrar under chapter III – Section 22 is not ambiguous and therefore heading appended to it cannot be referred as an aid in construing the provision and cannot be used for cutting down the application of clear words: *J.B. Mangaram Mazdoor Sangh Vs. J.B. Mangaram Karamchari Union, I.L.R. (2016) M.P. 1958*

INDUSTRIAL RELATIONS RULES, M.P., 1961

– Rule 16 & 17 – See – Industrial Relations Act, M.P., 1960, Section 17: *J.K. Tyre Banmore Kamgar Sangh Vs. Registrar, Trade Union/Representative Union, I.L.R. (2016) M.P. 1629*

INDUSTRIAL TRAINING (NON-GAZETTED) CLASS-III SERVICE RECRUITMENT RULE, M.P., 2009

– Rule 8 & Schedule Three – Appointment – On the post of computer operator – Rejection of candidature on the ground that the candidate does not have requisite qualification – Held – As per Recruitment Rules minimum qualification for the post is degree/diploma or BCA and in the subsequent order the department itself recognized the qualification of MCA as requisite qualification and which was possessed by the appellant – In such circumstances the rejection of the candidature of the appellant who was meritorious and was placed at higher place in the merit list, was arbitrary and illegal – Respondents are directed to appoint the appellant – Appeal allowed: *Anamika Shakla Vs. State of M.P., I.L.R. (2017) M.P. 282 (DB)*

INDUSTRIES (SHEDS, PLOTS AND LAND ALLOTMENT) RULES, M.P., 1974 (AS AMENDED ON 01.04.1999)

– Power to renew or cancel the lease – Jilla Yojna Samiti was given power to renew or cancel the lease which were executed prior to 1974 – Lease deeds in

question were executed in 1963 & 1968 therefore Jilla Yojna Samiti was duly authorized to cancel the lease – Appeal dismissed: *Central Paints Co. Pvt. Ltd. Vs. State of M.P., I.L.R. (2018) M.P. 980*

INFORMATION TECHNOLOGY ACT (21 OF 2000)

– Section 43 r/w 66 – See – Criminal Procedure Code, 1973, Section 438: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

– Section 66-D – See – Criminal Procedure Code, 1973, Section 482: *Muyinat Adenike Vs. State of M.P., I.L.R. (2018) M.P. *56*

– Section 66-D – See – Penal Code, 1860, Section 420 & 468: *R. Shrinivasan Vs. State of M.P., I.L.R. (2017) M.P. 738*

– Section 67 – Presumption – Held – Even if content is not known and a person publishes or transmits or caused to do so even without knowledge, provisions of Section 67 would be attracted – Presumption of knowledge to petitioner shall have to be assumed and onus will be upon him to rebut it by leading evidence: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 67 & 67-A – Effect – Right to Complaint – Held – Disclaimer only warned against scenes of intimacy in the episode but if depicted scenes transcend into gross display of lust, it enters into realm of obscenity and a subscriber would be well within his right to complain – Disclaimer cannot prevent a person from lodging FIR in respect of such offence: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 67 & 67-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Applicability – Web Series – "Sexually Explicit Acts" – Held – Once it is determined that material is obscene, person liable for depicting such material or causing to depict such material cannot escape his liability on ground that subscriber having opted to watch it cannot make a complaint thereafter – Investigation is still in progress, it cannot be stated at this stage that offence u/S 67 & 67-A is not attracted – FIR cannot be quashed at this stage u/S 482 Cr.P.C. – Application dismissed: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 80(1) – See – Penal Code, 1860, Section 294: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 85 – Offence by Company – Held – Apex Court concluded that the word "as well as the company" itself shows that neither the Director nor the Company can be prosecuted in isolation – In instant case, FIR reveals that complainant has prayed for appropriate action not only against petitioner but also against the

company – No breach of Section 85: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

INTEREST ACT (14 OF 1978)

– Section 2(b) & 3 and Civil Procedure Code (5 of 1908), Section 34 – Interest on Delayed Payment of Salary – Entitlement – Held – Respondent had not joined the place of posting to which he was posted and this disentitles him to claim interest on salary which was granted as a concession without working on the post – Respondent not entitled to interest as there was a sufficient cause with employer not to pay salary without work – Petition claiming interest is dismissed – Appeal allowed: *State of M.P. Vs. Ramlal Mahobia, I.L.R. (2018) M.P. 2813 (DB)*

– Section 2(b) & 3 and Civil Procedure Code (5 of 1908), Section 34 – Jurisdiction – Rate of Interest – Held – Award of interest by writ court is not controlled by C.P.C., it is the Act of 1978 which empowers the Court to allow interest at the rate not exceeding the current rate of interest as defined u/S 2(b) of the Act – Further, in terms of Section 3, grant of interest @ 12% p.a. is not justified: *State of M.P. Vs. Ramlal Mahobia, I.L.R. (2018) M.P. 2813 (DB)*

INTERPRETATION

– Applicability – Held – If reasons cannot be substituted by filing return in a case where order impugned is passed by statutory authority, there is no justification in not applying this principle to an order passed by a non statutory authority: *Arvind Kumar Mehra Vs. State of M.P., I.L.R. (2018) M.P. 1663*

– "Citizenship" & "Domicile" – Held – There is difference between concept of citizenship and domicile – Citizenship can be acquired whereas domicile is to be proved – In present case, it cannot be said that merely on acquiring USA citizenship, appellant has ceased to be a domicile in India – Principles resolved in 1951 Hague Conference enumerated: *Ajay Sharma Vs. Neha Sharma, I.L.R. (2019) M.P. 406 (DB)*

– Conviction & Sentence – Suspension of – Held – Suspension of sentence and suspension of conviction are different in nature and are distinct – Suspension of sentence would not mean that conviction has also been stayed or suspended: *Abdul Hakeem Khan @ Pappu Bhai Vs. State of M.P., I.L.R. (2020) M.P. 1281 (DB)*

– "Executive Instructions" – Held – Although executive instructions issued from time to time, looking to changing scenario of society, can be taken into consideration by authorities but alongwith statutory provisions provided under the Act and Rules: *Sunil Kumar Jeevtani Vs. State of M.P., I.L.R. (2020) M.P. 2757 (DB)*

– Executive Instructions – Held – Where the Statute or Rules are silent, then Executive Instructions can be issued to supplement the Rules and not supplant it: *Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1841*

– Executive Instructions & Statutory Rules – Held – It is settled law that Executive/Administrative Instructions are not a statutory rule nor does it have any force of law, they can be issued as supplement to rules and not to supplant them – Executive instructions which are not in consonance with statutory provision are void ab initio: *Krishna Gandhi (Mrs.) Vs. State of M.P., I.L.R. (2018) M.P. 1427*

– Fraud – Held – Petitioner, despite knowing the fact, that he has limited right for construction and to receive sale consideration as one time measure, he applied for execution of sale deed which was not at all envisaged in tender or agreement to which he was the signatory – Conduct of petitioner not free from blemish – Respondents established the plea of fraud/malice in law with sufficient material: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Judgment & Precedent – Held – Supreme Court concluded that a precedent is what is actually decided by Supreme Court and not what is logically flowing from a judgment – Precedent relates to the principles laid down or ratio decidendi of a case which does not include any factual matrix of case – A judgment should not be construed as Statute – Blind reliance on a judgment without considering fact and situation is not proper – Further, a singular different fact in subsequent case may change the precedential value of judgment: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Judgments of Supreme Court – Held – Apex Court repeatedly concluded that its judgments ought not to be interpreted as statutes and must be seen in the backdrop of facts and circumstances in which the particular ratio is laid down: *Saida Bi (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1055*

– Jurisdiction – Held – Apex Court concluded that consent of both the parties cannot confer jurisdiction nor an estoppel against statute: *Praveen Bajpai Vs. Ku. Ayushi Bajpai, I.L.R. (2019) M.P. 2594*

– "Legal Heir" & "Legal Representative" – Held – The meaning of word "legal representative" is having different connotation from the word "legal heir" in CPC – Name of legal representative recorded in earlier suit was for purpose of contesting the suit but not as owner of the property – Defendant, as a legal representative was not competent to enter into a compromise against the interest of the plaintiff – Impugned order to this effect is set aside: *Jagdish Chandra Gupta Vs. Madanlal, I.L.R. (2019) M.P. 140*

– Precedent – Held – Judgment of Supreme Court cannot be read as Euclid's Theorem – Blind reliance on a judgment without considering the fact situation is bad in law – A single different fact may change precedential value of judgment: *Union Bank of India Vs. Vinod Kumar Dwivedi, I.L.R. (2020) M.P. 2656*

– Premium Amount/Cost of Land – Held – License to construct and payment of premium cannot be treated as payment of "cost of land" – Amount of premium sought to be equated with cost of land is not only misconceived but also amounts to misrepresentation – Inadvertent use of words "cost of land" in some annexures will not alter the meaning of word "premium" : *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Separate Entity – Held – In a calculated manner, lease deed was executed in favour of petitioner which is a separate entity for namesake – Beneficiaries behind curtains are the same persons: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Terminology of Instrument/Document – Held – A loose terminology used in instrument at some place is not determinative – To find out real intention of parties, complete document needs to be read in light of relevant statutory provisions to understand what is decipherable from it: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

INTERPRETATION OF STATUTES

– Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) – Eviction suit – It is well settled legal proposition that question of title to the property has to be examined incidentally and cannot be decided finally in the eviction suit: *Paramjeet Kaur Bhambah (Smt.) Vs. Smt. Jasveer Kaur Wadhwa, I.L.R. (2016) M.P. 2046*

– Acquittal – Revision – By private party – No State appeal – In revision by private parties, order of acquittal can be set aside – Order of acquittal cannot be converted into order of conviction – High Court at the most can direct for retrial – However, this jurisdiction to be exercised by the High Court in exceptional cases: *Abhilasha Vs. Ashok Dongre, I.L.R. (2016) M.P. 266*

– 'Adverse possession' - Ground of 'Adverse possession' cannot be used as a 'sword' for prosecuting Civil Suit, but it can be used as a 'shield' for defending the right: *Jwala Prasad Vs. State of M.P., I.L.R. (2016) M.P. 1133*

– Agreement – Assignment – Meaning – Benefit of a contract can be assigned but not the burden, because the promisor cannot shift the burden of his obligation

without a novation: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

– Ambiguity – Held – Any ambiguity in a penal statute has to be interpreted in favour of the accused: *Alkem Laboratories Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 779 (SC)*

– Amendments – Effect & Presumption – Held – Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation – There is a presumption of prospectivity unless shown to the contrary by express provision in statute or is otherwise discernible by necessary implication: *Vijay Luniya Vs. State of M.P., I.L.R. (2018) M.P. 2107 (DB)*

– Analysis – Held – When a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden – If provision of statute is clear and unambiguous, it should be given effect to irrespective of consequences: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Appeal against acquittal – Judgment of acquittal by the Trial Court ought not to be interfered in appeal by the High Court if the evaluation of evidence by the trial court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its judgment are reasonable and plausible: *State of M.P. Vs. Komal Prasad Vishwakarma, I.L.R. (2016) M.P. 3199 (DB)*

– Arbitration agreement – It is not necessary that all the terms and conditions of the agreement should be contained in one document and such terms can be ascertained from the correspondence between the parties: *Pooranchandra Agrawal Vs. Union of India, I.L.R. (2016) M.P. 1289*

– Arbitration agreement – Requirement of law is that the agreement should be in writing and it is not necessary that the agreement should bear the signature of the parties: *Pooranchandra Agrawal Vs. Union of India, I.L.R. (2016) M.P. 1289*

– Cantonments Act (41 of 2006) – Section 28 and Representation of the Peoples Act (43 of 1950), Section 15 – Distinction – Election to Assembly and Parliament Assemblies are conducted in terms of the Act of 1951 – Whereas Act of 2006 is a Special Legislation for administration of Cantonment area including Municipal Elections, so the Act of 1951 cannot be the basis to interpret the provisions of the Act of 2006: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Companies Act (18 of 2013) – Section 430 – Jurisdiction of Court – Held – It is well established principle of law that exclusion of jurisdiction of Court has to be specific and cannot be inferred and the provisions excluding the jurisdiction have to

be construed strictly – In Section 430 of the Act of 2013, word "Civil Court" cannot be read as "Criminal Court" – Jurisdiction of Criminal Court is not barred under the Act of 1956: *Manoj Shrivastava Vs. State of M.P., I.L.R. (2019) M.P. 207*

– Compassionate Appointment – Policy – Compassionate appointment has to be considered as per the policy which is prevailing on the date of consideration and not on the basis of a policy which was in-vogue at the time of death or filing an application for compassionate appointment: *Ajay Saket Vs. State of M.P., I.L.R. (2018) M.P. 1922*

– Conflict between the plain language of the provision and the meaning of the heading or the title – In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision there under: *J.B. Mangaram Mazdoor Sangh Vs. J.B. Mangaram Karamchari Union, I.L.R. (2016) M.P. 1958*

– Conflict between two statutes – Doctrine of harmonious construction allow both to operate in their respective field by ironing out the creases of conflict without doing harm to basic scheme and object of the statutes: *Manish Sharma Vs. Sarvapriya Enterprises, I.L.R. (2017) M.P. *7*

– Criminal Law – Circumstantial evidence – "Panchsheel" – Five Golden Principles: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Criminal Law – Life imprisonment – Meaning of – Life imprisonment shall actually mean imprisonment for whole of the natural life or to a lesser extent as indicated by the Court in the light of facts of a particular case: *Tattu Lodhi @ Pancham Lodhi Vs. State of M.P., I.L.R. (2017) M.P. 773 (SC)*

– Criminal Procedure Code, 1973 (2 of 1974), Sections 437 (1) & 437 (6) – Whether bail u/S 437 (6) of Cr.P.C. cannot be refused for the reasons which are generally invoked for refusing bail u/S 437 (1) of Cr.P.C. – Held – Reason for refusing bail u/S 437 (1) & 437 (6) of Cr.P.C. may sometimes be over lapping, so it cannot be regarded as absolute propositions of law – 2009 Cr.L.J. 4766 (Riza Abdul Razak Zunzunia Vs. State of Gujarat) discussed: *Bhagwan Vs. State of M.P., I.L.R. (2016) M.P. 3402*

– Fraud – Fraud vitiates every solemn act: *Shacheendra Kumar Chaturvedi Vs. Awadesh Pratap Singh Vishwavidhyalya, I.L.R. (2016) M.P. 1925*

– Inconsistency – Held – It is settled law that if grammatical construction leads to some absurdity or inconsistency with rest of the instruments, it may be departed from so as to avoid the absurdity and inconsistency – Interpretation is best which

makes the textual interpretation match the contextual – A statute is best interpreted when we know why it was enacted: *All India Gramin Bank Pensioners Organization Unit Rewa Vs. Madhyanchal Gramin Bank, I.L.R. (2018) M.P. 2820*

– Intention of Legislature – Held – Court cannot read anything into a statute provision, which is plain and unambiguous – To ascertain the intention of legislature, Court must see as to what has been said and what has not been said – Court is bound to accept the express intention of legislature: *Sumedha Vehicles Pvt. Ltd. (M/s) Vs. Central Government Industrial Tribunal, I.L.R. (2020) M.P. 2081*

– Internal aids – When the words are clear and unambiguous, marginal notes appended to a Section cannot be used for construing the Section – It is well settled that heading prefixed to Sections cannot control the plain words of the provision nor can they be used for cutting down the plain meaning of the words – Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision: *J.B. Mangaram Mazdoor Sangh Vs. J.B. Mangaram Karamchari Union, I.L.R. (2016) M.P. 1958*

– Invalid Provision – Legislature can pass a validating Act if the lacunae or defect, because of which the provision is declared to be unconstitutional or invalid has been properly rectified by amending the law: *Pradeep Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. *23 (DB)*

– Jurisdiction of Civil Courts – Provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and Tribunals other than civil courts are to be strictly construed as the civil Courts are the Courts of general jurisdiction: *Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak, I.L.R. (2016) M.P. 210*

– Jurisdiction of Court – Apex Court concluded that jurisdiction of Court can be invoked when the language of statute/provision is ambiguous but Court cannot enlarge the scope of legislation or intention when the language of statute is plain and unambiguous – Court cannot add or subtract words to a statute or read something into it which is not there: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 2024 (FB)*

– Juvenile Justice (Care and Protection of Children) Act, (56 of 2000) – Clause 4 of Section 1 – Provisions of the Act regarding detention, prosecution, penalty or sentence shall have overriding effect over any other law and consequently Rules of 2007 will also be applicable in toto: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

– 'Knowledge' & 'Intention' – The Apex Court held that "as compared to 'knowledge' the intention requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end": *Khadak Singh @ Khadak Ram Vs. State of M.P., I.L.R. (2018) M.P. 558 (DB)*

– Penalties – Penalties under Rule 10 of the CCA Rule 1966 are to be imposed with prospective effect and not with retrospective effect: *Saroj Kumar Shrivastava Vs. State of M.P., I.L.R. (2016) M.P. 774*

– Per Incuriam – 2008 Cr.L.J. 264 (Ajay Kant Sharma & ors. vs. Smt. Alka Sharma) – Case law incorporating meaning "any order" means 'final order' is held per incuriam and case law of 2010 (1) MPHT 133 (Tehmina Qureshi vs. Shazia Qureshi) is also held per incuriam: *Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai, I.L.R. (2016) M.P. 302*

– Per incuriam – Order dated 17.02.2016 passed in W.P. No. 12765 of 2015, order dated 19.02.2016 passed in W.P. No. 3179 and 3252 of 2016 and order dated 25.02.2016 passed in W.P. No. 2451 of 2016 – Held – Per incuriam: *Maa Reweti Educational & Welfare Society Vs. National Council for Teachers Education, I.L.R. (2016) M.P. 2269 (DB)*

– Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994) – Held – Act of 1994 is a special enactment for the benefit of mankind, thus the interpretation should be purposive: *Usha Mishra (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1194*

– Principle – Held – Cardinal principle of interpretation is that unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy: *Kanishka Matta (Smt.) Vs. Union of India, I.L.R. (2020) M.P. 2116 (DB)*

– Procedure – Held – If something cannot be permitted to be done directly, it cannot be permitted by indirect method: *Ajit Singh (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1872*

– Protection of Women from Domestic Violence Act (43 of 2005) – Aims and Objects – Act of 2005 is essentially a remedial statute and it is trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Renewal – Grant of Renewal of mining lease is a fresh grant and must be consistent with law: *Pawan Kumar Ahluwalia Vs. Union of India, I.L.R. (2016) M.P. 1074 (DB)*

– Right to Appeal – Right to prefer an appeal is a right created by statute: *Karuna Gehlot (Smt.) Vs. Manikchand Choubey, I.L.R. (2017) M.P. 624*

– Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – In the context of the provisions of Section 24(2) of the Act of 2013, the word 'Paid' and 'deposited' cannot be synonym to "offered" or "tendered": *Parasram Pal Vs. Union of India, I.L.R. (2016) M.P. 2696*

– Rule – Supreme Court held, that rule of interpretation is that definition given in one statute cannot be exported for interpretation of another statute – If two statutes dealing with same subject use different language then it is not permissible to apply the language of one statute to other while interpreting such statutes – The same words may mean one thing in one context and another in a different context – It is well settled principle of interpretation that dictionary meaning and the common parlance test can also be adopted and not the scientific meaning: *State of M.P. Vs. Yugal Kishore Sharma, I.L.R. (2018) M.P. 844 (FB)*

– Similar Statute – Held – Judgment of Apex Court under a particular statute which is pari materia to another statute, can not only be an inspiration but also have binding effect upon High Court adjudicating upon that another statute: *Amarnath Verma Vs. State of M.P., I.L.R. (2019) M.P. 807*

– State Policy – Disqualification – Held – Any firearm policy framed by State is subservient to statutory provision under the Arms Act and cannot provide an additional disqualification which is not provided in the Arms Act: *Chhotelal Pachori Vs. State of M.P., I.L.R. (2019) M.P. 730 (DB)*

– 'Substitution' of a provision results in repeal and replacement by the new provision: *Gangaram Loniya Chohan Vs. State of M.P., I.L.R. (2016) M.P. 1359 (DB)*

– Ultra vires – The Court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances: *S. Goenka Lime & Chemicals Ltd. Vs. Union of India, I.L.R. (2016) M.P. 1382 (DB)*

– Word "Exemption" – Held – The word "exemption" has to be construed strictly and in case of any ambiguity, the benefit must go to the revenue: *National Insurance Co. Ltd. Vs. Smt. Ram Khiloni alias Khiloni, I.L.R. (2020) M.P. 696*

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JAIV ANAASHYA APASHISTHA (NIYANTRAN) ADHINIYAM, M.P. (20 OF 2004)

– Section 3 – See – Constitution – Articles 213(1), 254, 304(b): *Popular Plastic (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. *93 (DB)*

JNKVV SERVICE PENSION RULES, 1987

– See – Civil Services (Pension) Rules, M.P. 1976: *Kanhaiyalal Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2019) M.P. 2476*

JUDGES (PROTECTION) ACT (59 OF 1985)

– Section 3 – See – Constitution – Article 226: *JMFC Jaura, Distt. Morena Vs. Shyam Singh, I.L.R. (2020) M.P. 1273 (DB)*

JUDICIAL SERVICE PAY REVISION, PENSION AND OTHER RETIREMENT BENEFITS RULES, M.P., 2003

– Rule 9 and VAT Rules, M.P., 2006, Rule 4(5) – Judicial Member – Petitioner retired as District & Sessions Judge – He was appointed as Judicial Member of M.P. Commercial Tax Appellate Board – He shall be entitled for salary and allowances minus (-) Pension, which he was drawing prior to issuance of the recovery orders: *Praveen Shah Vs. State of M.P., I.L.R. (2016) M.P. *7*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT (56 OF 2000)

– Sections 2(k), 2(l), 7 (a) & 20 and Essential Commodities Act (10 of 1955), Section 3 & 7 – Amendment of 2006 – Age of Juvenile – Appellant convicted and sentenced u/S 3/7 of Act of 1955 – Held – Date of birth of appellant is 29.05.1979 as verified by the Board of Secondary Education – Alleged offence was committed on 12.03.1997 and on that date accused/appellant was 17 years, 9 months and 13 days old – Appellant would be entitled to get benefit of Act of 2000 and according to which he was a juvenile as he had not completed the age of 18 years on the date of incident – Appellant has suffered a rigor for almost 20 years, would not be proper to remit the case back to Juvenile Justice Board – Conviction sustained but sentence liable to be quashed – Appeal allowed to the said extent: *Nitin Sharma Vs. State of M.P., I.L.R. (2018) M.P. 555*

– Section 7 and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12 – Determination of Age – Trial Court rejected the marks-sheet on the ground that the source of information for recording the date of birth is not proved – Held – Marks-sheet of High School was issued by Board of Secondary Education, M.P. which is an instrumentality of State – Marks-sheet produced by applicant was not challenged as being forged or fabricated – Medical opinion for the purpose of determination of age can be sought only when the documents as mentioned in Rule 12(3) are not available – Courts below wrongly disbelieved the Matriculation marks-sheet – Applicant was juvenile on the date when the incident took place – Application allowed: *Chhotu @ Ranvijay Vs. State of M.P., I.L.R. (2016) M.P. 1601*

– Section 7A – See – Penal Code, 1860, Sections 457, 306 & 376: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

– Section 7-A and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12 – Determination of Age – Procedure – Copy of the school Scholar Register was placed on record and was duly proved by the teacher – This document comes in the purview of documents prescribed under Rule 12(3)(a)(ii) of the Rules, 2007 in which the date of birth of the applicant is mentioned as 31.05.1997 – Consequently, at the time of incident applicant was below the age of 18 years – Thus he was juvenile – Impugned order is not sustainable and the same is hereby quashed – Revision allowed: *Sonu Jadugar @ Ajhar Khan Vs. State of M.P., I.L.R. (2017) M.P. *30*

– Section 7A and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 9(1) & 9(2) – Claim of Juvenility – Jurisdiction of Court – Held – As per Section 9(2) of the Act of 2015, Court trying an offence, on raising the plea of juvenility by accused on date of occurrence of offence, has the jurisdiction to adjudicate the claim by making inquiry and taking evidence – Jurisdiction of trial Court is not ousted by the new Act of 2015 – Trial Court cannot refuse the application and can determine the claim of juvenility at any stage even prior to final disposal – Impugned order passed without application of mind and is set aside – Revision allowed: *Saddam Vs. State of M.P., I.L.R. (2018) M.P. *108*

– Section 7-A and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 94 & 111 – Determination of Age – Procedure – In the trial Court, Special Judge got conducted ossification test and held that age of accused on the date of occurrence was above 18 years and thus trial would be held under provisions of Cr.P.C. – Challenge to – Held – Impugned order was passed in March 2016 whereas new Act came into force in January 2016 – According to Section 94 of new Act of 2015, Court of Sessions had no power to determine the age of accused and this power is granted only to the Juvenile Board constituted under the Act – It was incumbent

for Special Judge to follow provisions of Section 94 of the new Act – Impugned order not in accordance with new Act and is set aside – Application allowed: *Indrasingh Vs. State of M.P., I.L.R. (2017) M.P. *92*

– Sections 12 & 15 – Grant of bail to Juvenile – Learned Sessions Judge had declined to grant bail to juvenile by upholding the reasoning of Juvenile Justice Board – Held – In view of the report of the Probation Officer and the circumstances under which the offence is alleged to have been committed and the fact that the guardians of the juvenile are clearly not in a position to exercise any disciplinary control over him, in case of release on bail, the juvenile would expose himself to moral, psychological and physical dangers – It would not be in the interest of justice to release him on bail – Revision is dismissed: *Prashant Mishra Vs. State of M.P., I.L.R. (2016) M.P. 2817*

– Section 19 – Removal of disqualification attaching to conviction – At the time of incidence and conviction by the Juvenile Justice Board, the petitioner was juvenile – As per Section 19(1) of the Act, the disqualification attached to the conviction is removed and it is made clear that conviction of the petitioner will not affect his service career in any manner: *Monu @ Kaushal Singh Bhadoriya Vs. State of M.P., I.L.R. (2016) M.P. *30*

– Section 41 and Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 33(5) – Court – Implies – Civil Court – Which has jurisdiction in the matter of adoption and guardianship, includes, District Court, Family Court, City Civil Court: *Tarun Kadam Vs. State of M.P., I.L.R. (2016) M.P. 846 (DB)*

– Section 41 (6) – Jurisdiction – To entertain application for adoption – Family Court can: *Tarun Kadam Vs. State of M.P., I.L.R. (2016) M.P. 846 (DB)*

– Clause 4 of Section 1 – See – Interpretation of statutes: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 (2 OF 2016)

SYNOPSIS

1. **Anticipatory Bail u/s 438 CrPC**
2. **Child Welfare Committee/ Functions & Powers**
3. **Determination of Age/ Presumption & Proof**
4. **Exceptions**
5. **Jurisdiction of Court**

1. Anticipatory Bail u/s 438 CrPC

– Section 10 & 12 – Words "arrest", "detained" and "apprehended" – Held – In the Act of 2015, the word "apprehended" or "detained" has been used in place of "arrest" which indicates the legislative intent that juvenile cannot be placed under harsh or embarrassing conditions – Remedy of Section 438 Cr.P.C. to a juvenile furthers the legislative intent of Act of 2015: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

– Section 10 & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Maintainability of Application – Held – Remedy of seeking anticipatory bail u/S 438 Cr.P.C. by a juvenile is maintainable – No provision in the Act of 2015 either expressedly or by necessary implication, excludes applicability of Section 438 of the Code – Section 10 & 12 of the Act of 2015 do not bar the remedy of anticipatory bail: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

– Section 12, Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Sections 498-A, 376, 506(B) & 34 – Anticipatory Bail – Held – Charge sheet against co-accused persons has been filed and only allegation against present applicant is in respect of criminal intimidation – From the very nature of allegations, it is fit case for grant of anticipatory bail – Application allowed: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

2. Child Welfare Committee/Functions & Powers

– Section 30 – Functions and responsibilities of Child Welfare Committee – Petition filed against order of Child Welfare Committee (CWC) directing petitioner to bring child in the office in between 10:00AM to 05:00PM on every Friday giving visitation right to husband – Held – Except Section 30(xii), Committee cannot take cognizance with respect to protection of a child who is in need of care & protection – Suo Motu cognizance has not been taken by the Committee reaching out to the child in need, but action taken on the basis of complaint by husband – Function discharged by Committee is not specified in the Section: *Priya Yadav Vs. State of M.P., I.L.R. (2017) M.P. 605*

– Section 37 – Powers of Child Welfare Committee – Primary function of the Committee starts when child is produced before them or intimation received by Child Welfare Committee on verification by protection officer or by own visit after passing the order by all three members – No other power can be exercised by the members of Child Welfare Committee with respect to child who is not in conflict with law and in need of care and protection, not brought before them: *Priya Yadav Vs. State of M.P., I.L.R. (2017) M.P. 605*

3. Determination of Age/Presumption & Proof

– Section 9 & 94(2) – Determination of Age – Proof of – Aadhar Card – Held – Aadhar Card cannot be used as a proof of date of birth, it is only for the purpose of identification of person: *Sharda Soni @ Sonu Soni Vs. State of M.P., I.L.R. (2018) M.P. 2507*

– Section 9 & 94(2), Penal Code (45 of 1860), Sections 363, 366-A & 376(2), Protection of Children from Sexual Offences Act, (32 of 2012), Section 4/6 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(w)(ii) & 3(2)(v-a) – Bail to Juvenile – Determination of Age – Held – Accused produced mark sheet of Class I issued by School which was duly proved by Principal which shows that accused was below 18 yrs. of age at the time of incident – It is genuine document which is part of record maintained by school in due course of business – If genuineness of school certificate is not questioned, then law gives prima importance to date of birth certificate issued by school – Impugned order set aside – Revision allowed: *Sharda Soni @ Sonu Soni Vs. State of M.P., I.L.R. (2018) M.P. 2507*

– Section 9(1) & 9(2) – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7A: *Saddam Vs. State of M.P., I.L.R. (2018) M.P. *108*

– Section 9(1) & 9(3) – Assessment of Age by Sessions Court – Held – In respect of jurisdiction of Sessions Court regarding assessment and determination of age of accused, as per Section 9(1) of the Act of 2015, Court has to have a satisfaction first before forwarding the child to the Juvenile Justice Board – Court has to form an opinion that offender was a child for which Court is not precluded from seeking evidence – Section 9 clearly bestows authority on Court to record a finding that whether a person brought before him is a child on the date of commission of offence or not and this exercise is not to be carried out in a mechanical manner without there being any objective assessment and subjective satisfaction – In the present case, Sessions Court has not exceeded its jurisdiction in passing the order: *Hariom Singh Vs. State of M.P., I.L.R. (2018) M.P. 1007*

– Section 94 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 19 – Determination of Age – Considerations – Held – Age or date of birth of a child as per the School Admission Register will prevail over the matriculation or equivalent certificate: *Manish Barkhane Vs. State of M.P., I.L.R. (2019) M.P. *50*

– Section 94(2) – Presumption and Determination of Age – Proof of Age – Held – Admission register of two schools showing date of birth as 08.11.1998 whereas matriculation certificate showing as 10.08.2001 – Supreme Court held that where

different date of births are recorded in different classes, then date of birth recorded in first school shall be deemed to be the effective date – Sessions Court rightly discarded the matriculation certificate and held the date of birth to be 08.11.1998: *Hariom Singh Vs. State of M.P., I.L.R. (2018) M.P. 1007*

– Section 94 & 111 – See – Juvenile Justice (Care and Protection of Children) Act, 2000 (now Repealed), Section 7-A: *Indrasingh Vs. State of M.P., I.L.R. (2017) M.P. *92*

4. Exceptions

– Section 12, Penal Code (45 of 1860), Sections 363, 376 (2)(n), 347, 368 & 354(2)/34 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 & 7/8 – Bail to Juvenile – Exceptions – Held – It can be said that release of juvenile on bail is his right but in instant case, report of Probation Officer shows that accused is disobedient and is in contact with persons who are not man of strong/good character/reputation – Restrictions/exceptions mentioned in Section 12 are attracted – If applicant is released on bail, he will definitely come into contact with known criminals and which will harm him morally and psychologically – Release will defeat the ends of justice – Bail rightly rejected – Revision dismissed: *Vinay Tiwari Vs. State of M.P., I.L.R. (2018) M.P. 2047*

5. Jurisdiction of Court

– Sections 2(23), 9(1) & 9(3) – Jurisdiction of Court – Petition against order passed by Addl. Sessions Judge whereby petitioner/accused was treated to be a major rejecting his application to treat him as a juvenile – Held – As per Section 2(23) of the Act of 2015, Court includes District Court and District Court includes Sessions Court, therefore contention of petitioner that Sessions Court is not a Court as per Section 2(23) of the Act is rejected – No interference is called for – Petition dismissed: *Hariom Singh Vs. State of M.P., I.L.R. (2018) M.P. 1007*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016

– Rule 19 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 94: *Manish Barkhane Vs. State of M.P., I.L.R. (2019) M.P. *50*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007

– Rule 12 – Proof of Age – Applicability of Rules – Held – Apex Court has concluded that Rule 12 of the Rules of 2007 though strictly applicable to a child in

conflict with law, would be applicable to determine the age of a child who is a victim of crime – Rule 12(3) is applicable for determining the age of prosecutrix: *Rabiya Bano Vs. Rashid Khan, I.L.R. (2017) M.P. 2579 (DB)*

– Rule 12 – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7: *Chhotu @ Ranvijay Vs. State of M.P., I.L.R. (2016) M.P. 1601*

– Rule 12 – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7-A: *Sonu Jadugar @ Ajhar Khan Vs. State of M.P., I.L.R. (2017) M.P. *30*

– Rule 12(3) – See – Penal Code, 1860, Sections 457, 306 & 376: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

– Rule 12(3)(a)(i) – Sexual Offence – Consent of Minor – Proof of Age – Held – Apex Court concluded that date of birth entered in the school first attended by child can be treated as final and conclusive – No such certificate or admission register produced – TC issued by previous school does not fulfill the requirement of Rule 12 – Further, no witness to prove the said document – Prosecution failed to establish that prosecutrix was minor on the date of incident: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Rule 33(5) – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 41: *Tarun Kadam Vs. State of M.P., I.L.R. (2016) M.P. 846 (DB)*

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KASHTHA CHIRAN (VINIYAMAN) ADHINIYAM, M.P. (13 OF 1984)

– Section 5 & 6 – Revocation of License of saw mill on the ground of possessing illegal stock of wood – Opportunity of hearing – Held – Statement of all prosecution witnesses and other material/documents on the basis of which opinion has been formed, were neither supplied to the petitioner nor an opportunity of cross examination was given – Licensing authority also failed to exercise the powers u/S 6 of the Act on a reference to impose cost of Rs. 10,000 – No enquiry was conducted by the Licensing Authority – Order is per-se-illegal – Matter remitted back to Licensing Authority to proceed afresh in accordance with law – Petition disposed: *Kedar Singh Yadav Vs. State of M.P., I.L.R. (2017) M.P. *50*

KEROSENE (RESTRICTION ON USE AND FIXATION OF CEILING PRICE) ORDER, 1993

– Sub-clause 3(2) – See – Criminal Procedure Code, 1973, Section 482: *Rasmeet Singh Malhotra Vs. State of M.P., I.L.R. (2016) M.P. 329*

KHADI TATHA GRAMODYOG VINIYAM, M.P., 1980

– Clause 4(5) – See – Gramodyog Adhiniyam, M.P., 1978, Section 29: *Sevakram Shivedi Vs. M.P. Khadi Tatha Gram Udhyog, I.L.R. (2017) M.P. *28*

KRISHI UPAJ MANDI ADHINIYAM, M.P., 1972 (24 OF 1973)

– Section 2 & 19(6) – Hulled Sesamum Seed (Dhuli Tili) – Respondents directed to obtain permit for removing the processed product, namely, Hulled Sesamum Seed from the market area – Whether Sesamum Seed (Dhuli Tili) comes into existence after "processing" and is not required to obtain permit for removing it from the market area – Held – Yes, the 'Hulled Sesamum' is obtained after the mechanical process of husking, parboiling i.e. removing the upper layer (Husk) of the seed, and the characteristic of the original Tili gets changed after processing, as the seed cannot be used as a seed for obtaining crop, so the Petitioners are entitled to remove or transport the processed product (Hulled Sesamum Seeds) from the market yard or market proper or market area by carrying a bill or cash memorandum issued under Section 43 of Vanijyik Kar Adhiniyam, 1994 – Petition allowed: *Paras White Gold Agro Industries (M/s.) Vs. M.P. State Agriculture Marketing Board, I.L.R. (2016) M.P. 2164*

– Sections 3, 4 & 5 – Notifications – Requirement of – Held – Mere shifting of market yard to a different place would not mean that State is intending to establish a new Krishi Upaj Mandi – For such shifting, State is not required to issue notifications u/S 3 & 4 of Adhiniyam – Provisions of Section 3 & 4 of Adhiniyam does not apply in case of shifting of market yard: *Kisan Sewa Sangh Vs. State of M.P., I.L.R. (2020) M.P. *1*

– Section 11-B(2)(cc) – Disqualification in the matter of appointment as a member in the mandi in view of provision contained u/S 11-B(2)(cc) of the Adhiniyam, 1972 – Held – Since after 26.01.2001 petitioner was blessed with a third child petitioner is disqualified to hold the office of Mandi as per the provision contained u/S 11-B(2)(cc) – It is an appointment prohibited under law as it is not an appointment in the eye of the law, being non est, inoperative and void ab initio: *Mulayam Singh Yadav Vs. State of M.P., I.L.R. (2017) M.P. *9 (DB)*

– Section 40-A and Fundamental Rules, Rule 110 – Transfer of Government Servant – Power of State Government – Held – U/S 40-A of the Act of 1972, State

Government has been conferred power in respect of Marketing Board and Mandi Samiti/Committee to issue directions and Board and Samiti/Committee is bound to comply with directions – Further held – Rule 110 of Fundamental Rules also confers power to transfer a Government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government: *Prashant Shrivastava Vs. State of M.P., I.L.R. (2018) M.P. 2104 (DB)*

– Section 55(1) & 55(2) – Applicability – Removal of Chairman – Irregularity in auction proceedings – Held – Both sections deal with different class of persons, Members u/S 55(1) and Chairman/Vice Chairman u/S 55(2) with different nature of punishments – Allegations against petitioner are of period when he was Chairman and show cause notice also issued when he is a Chairman, thus Section 55(1) is not applicable – Impugned order to the extent, it debars petitioner u/S 55(1) is in excess of jurisdiction and is hereby quashed – However as per records/evidence, allegations of irregularities proved and hence order u/S 55(2) of removing him from post of Chairman for remainder of his term is affirmed – Petition partly allowed: *Someshwar Patel Vs. State of M.P., I.L.R. (2017) M.P. 2397*

– Section 55(1) & 55(2) – Removal of Chairman – Proceedings and Procedure – Principle of Natural Justice – Held – Adhiniyam of 1972 does not provide any express rules or procedure for proceeding u/S 55(1) and (2) thereof – Section 55 itself contemplates that before action is taken against delinquent, show cause notice and reasonable opportunity of hearing shall be afforded to him – In present case, show cause notice was issued, documents were supplied as well as opportunity for personal hearing was granted to petitioner – No violation of principle of natural justice – Aims and objects of the Act of 1972 discussed: *Someshwar Patel Vs. State of M.P., I.L.R. (2017) M.P. 2397*

KRISHI UPAJ MANDI (ALLOTMENT OF LAND AND STRUCTURES MARKET COMMITTEE/BOARD) RULES, M.P., 2005

– Rule 9(4) further repealed by M.P. Krishi Upaj Mandi (Allotment of Land and Structures) Rules, 2009 and Constitution – Article 14 & 19(1)(g) – Renewal of Lease – Entitlement – Held – Lease was initially for a period of three years from 2006-09, which was further extended for one year till 30/06/10 after coming into force of Rules of 2009 – Agreement contains clause of renewal – Rule 9(4) provides for renewal of lease for a maximum period of 30 yrs. – Petitioners entitled for consideration for renewal of lease on principle of parity as Respondents renewed lease of other 32 structures in 2014 after coming into force of Rules of 2009 – No ground to justify singling out petitioners and denying their legitimate claim of renewal

depriving them of their fundamental rights under Article 14 and 19(1)(g) of the Constitution – Impugned orders set aside – Petitions allowed: *Rakesh Jain Vs. State of M.P., I.L.R. (2019) M.P. 1041*

KRISHI UPAJ MANDI (ALLOTMENT OF LAND AND STRUCTURES MARKET COMMITTEE/BOARD) RULES, M.P., 2009

– Rule 2(h) – Held – Rule 2(h) does not contemplate distinction between 'Shop' and 'Canteen' – It only defined structure and building inclusive of shop and canteen: *Rakesh Jain Vs. State of M.P., I.L.R. (2019) M.P. 1041*

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LABOUR LAWS (AMENDMENT) AND MISCELLANEOUS PROVISIONS ACT, M.P., 2002 (26 OF 2003)

– and Constitution – Article 14 & 21 – Challenge to Legislation – Scope – Held – The scope is within a limited domain i.e. on the twin test of lack of Legislative competence and violation of any of Fundamental Rights guaranteed in Part III of Constitution: *State of M.P. Vs. M.P. Transport Workers Fedn., I.L.R. (2020) M.P. 1047 (SC)*

– and Constitution – Article 14 & 21 – Validity of Amendment – Held – In the wisdom of legislature, the process would be better served by maintaining regular criminal courts as a forum for adjudication of such disputes which have a criminal aspect, relating to identical 16 labour law statutes – System is working in Criminal Courts for last more than a decade and no grievance has been made out – Impugned order strucking down the amendment is set aside – Amendment Act of 2002 upheld – Appeals allowed: *State of M.P. Vs. M.P. Transport Workers Fedn., I.L.R. (2020) M.P. 1047 (SC)*

LAND ACQUISITION ACT (1 OF 1894)

– Section 4 – Notification u/s 4 of Act, 1894 – Thereafter, Act, 2013 came into force – In view of Section 114 of Act, 2013, proceedings of Act 1894 which are pending are saved – It cannot be held that with commencement of Act 2013, notification u/s 4 of Act 1894 would stand lapsed: *Rajaram Vs. State of M.P., I.L.R. (2016) M.P. 1005*

– Section 4 – Publication of preliminary notification and powers of officers thereunder – At the stage of notification, only locality is required to be mentioned and not the survey numbers or the names of the owners of land, as it is not possible to mention the same without entering into the exercise contemplated in Sub-Section 2 of Section 4 of the Act: *Omprakash Jaiswal Vs. State of M.P., I.L.R. (2016) M.P. 2913 (DB)*

– Sections 4, 6, 11 & 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) – Non Payment of Amount of Compensation – Effect – Award of compensation was passed in 1999 in respect of acquisition of land of petitioners – Amount not deposited in accounts of petitioners – Held – As per Section 24(2) of the Act of 2013, on the date of commencement of the Act of 2013, if award is passed five years prior from the said date and compensation has not been paid, land acquisition proceedings shall be deemed to have lapsed – Proviso to Section 24(2) of the Act of 2013 makes it clear that in case where an award has been made and compensation to majority of the land owners has not been deposited in the account of beneficiaries then all beneficiaries specified in notification of old Act are entitled for compensation under the new Act of 2013 – In the present case, proviso cannot be invoked as petitioners does not come within the purview of majority of land owners to whom amount have not been deposited in their account – Proceedings with respect to the land in question belonging to petitioners shall stand lapsed – Petition partly allowed: *Shushila Bai Vs. State of M.P., I.L.R. (2017) M.P. 2954*

– Sections 4, 6 & 17 – Land Acquisition – Delay & laches – Petitioners were aware of the fact that the land in question had already been acquired even prior to filing of the present petition, however they chose not to challenge the acquisition proceedings at the time of filing the proceedings – Even after filing of the present petition when all the facts and details were brought on record by the respondent in the year 1992 & 1993, the petitioners chose not to assail the award or the acquisition proceedings and did so for the first time by filing an application for amendment of the petition on 02.02.1996, i.e. 6 years after passing of the award and 4 years after filing of the petition – Application for setting aside of the award thus suffers from inordinary delay and laches – Further, Transport Nagar for the establishment of which the land was acquired has become fully operational in the year 2013 providing additional ground to reject this Miscellaneous Petition – It was accordingly dismissed: *R.G. Agricultural Corporation (M/s.) Vs. Municipal Council, Chhatarpur, I.L.R. (2016) M.P. 810*

– Section 4 & 11 – Value of land – Sale deed is prior to the issuance of Section 4 Notification – Price of land rising on various factors such as development, population pressure etc. – Suitable adjustments required to calculate the value of land

on the date of Section 4 Notification – 15% is required to be added in the price mentioned in sale deed – For calculation for the price of un-irrigated land deduct 50% from the price of irrigated land: *State of M.P. Vs. Ramlal, I.L.R. (2016) M.P. 1456*

– Sections 4, 31 & 34 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2), proviso: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 4(1) & 5A – In respect of those, who did not object to Section 4(1) notification by filing objection u/S 5-A, the said notification must be treated as being in force: *Omprakash Jaiswal Vs. State of M.P., I.L.R. (2016) M.P. 2913 (DB)*

– Sections 4(1), 17(1) & 17 (4) – Question of fact – Petitioners are claiming ownership of the land over which the road is being constructed – But respondents are denying the ownership – Whether petitioners are owner of the land or it is a government land is a serious disputed question of fact, which cannot be decided in the Writ Petition – Writ Petition dismissed with liberty to challenge the order and ownership of the land in the question in accordance with the law before the appropriate forum: *Chhaya Kothari (Smt.) Vs. Ujjain Municipal Corporation, Ujjain, I.L.R. (2016) M.P. 1966 (DB)*

– Section 5A – Hearing of objections – The Land Acquisition Collector is duty bound to objectively consider the arguments advanced by the Objector and make recommendations duly supported by brief reasons as to why the particular piece of land should or should not be acquired and whether the plea put forward by the Objector merits acceptance – The recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons: *Omprakash Jaiswal Vs. State of M.P., I.L.R. (2016) M.P. 2913 (DB)*

– Sections 5A, 4 & 6 – See – National Highways Act, 1956, Sections 3A, 3B, 3C & 3D: *Neeti Development & Leasing Pvt. Ltd. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 1343*

– Section 11 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2015 – Second proviso to Section 24(2) added – Award passed on 30.11.2004 – Till date neither actual physical possession of the land taken by the State nor compensation amount has been paid to the land owner nor deposited in the Court – Held – As the award has been passed more than five years prior to the date of commencement of the Act of 2013 (i.e. on 1.1.2014), and both the contingencies specified under Section 24(2) of the Act of 2013, have not been satisfied,

namely (1) The actual physical possession of the land has not been taken or (2) the compensation amount has not been paid, so the acquisition proceedings are lapsed so far as it relates to the petitioners – Writ Petition allowed – Liberty granted to State to initiate fresh acquisition proceedings under the Act of 2013: *Parasram Pal Vs. Union of India, I.L.R. (2016) M.P. 2696*

– Section 11 & 16 – Acquisition of Land – Power of Collector to take Possession – Applicability – In the year 1944, Petitioner, through permission from erstwhile Maharaja Holkar State, acquired some land for the purpose of starting a public limited company – Land was acquired, possession was taken and compensation was paid by petitioner to land owners – During a period when company faced crisis, they sold certain piece of land and in respect of this transfer, on a complaint, Collector ordered to take back the whole property from petitioner – Challenge to – Held – State has not pointed out any statutory provision of law which empowers the Collector to dispossess the petitioner company – Collector has no jurisdiction to pass such order u/S 16 of the Land Acquisition Act – Order u/S 16 can only be passed when land of a person is acquired by passing an award by the Collector u/S 11 of the Act – This provision does not empower the State Government to forcibly dispossess the titleholder from his property against whom no such award has been passed and who has received the possession in 1946 after due acquisition and has paid compensation to the land owners directly, who is recorded as Bhumiswami and is in settled possession as lawful owner since pre-independence – Petitioner is entitled to possess and utilize the property – Order passed by Collector is set aside – Petition allowed: *The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1063*

– Section 16 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2): *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 17(1) – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2): *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 18 – Enhancement of Compensation – Computation – Comparison Method – Compensation of Rs. 8026 granted by Land Acquisition Officer holding the rate of land to be Rs. 1010 per acre, against which an application u/S 18 was filed by claimants, which was referred to District Court – Reference Court determined market price of acquired land to be of Rs. 12000 per acre – Claimant and State Government, both filed separate appeals – Held – Applying comparison method, claimant produced two sale deeds before acquisition of land and two sale deeds executed after acquisition of land – Although both sale deeds executed before date of acquisition belong to same village but within a very short span, there was a vast difference in rates and

there is no evidence on record to show that the lands sold were situated near the acquired land – Such sale deeds cannot be taken into consideration for determination of compensation – Further held – In F.A. No. 111/96, land situated at Sidhi was acquired in 1990 and rate was determined to be Rs. 24,000 per acre – Present acquired land is also situated in District Sidhi and was acquired in 1979, near about 12 years before – Looking to the rate of escalation of price of land which was not more than 6 to 9%, determination of market value @ Rs. 12000 acre is neither meager nor excessive – Court below rightly considered the rate of escalation and appropriately fixed the value of land – Appeal filed by State is dismissed whereas the one filed by claimants is partly allowed: *Shyam Singh (MST.) Vs. State of M.P., I.L.R. (2017) M.P. 1449*

– Section 18 – Reference to Court for Enhancement – Limitation – Revision against dismissal of application u/S 18 of the Act of 1894 by Land Acquisition Officer – Held – Award was passed on 31.01.2001 which was subsequently amended on 23.01.2003 and was finally approved on 25.01.2003 – Application u/S 18 of the Act was filed by applicant on 09.06.2003, is well within limitation as filed within 6 months from date of knowledge of award – Respondent directed to refer the matter to Reference Court for adjudication – Revision allowed: *Manulal Vs. State of M.P., I.L.R. (2017) M.P. *117*

– Section 18 – See – Town Improvement Trust Act, (M.P.) 1960, Section 72(2): *Arvind Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 1623 (DB)*

– Section 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Compensation – Enhancement – Applicability of Act of 2013 – Ground – Vide notification dated 02.12.2011, land of appellants were acquired – On 30.09.2013, Land Acquisition Officer passed an award – During this period Act of 2013 was introduced which came into force on 01.01.2014 – Appellants filed reference application before the District Judge for enhancement of compensation as per the provisions of Act of 2013 – Reference was dismissed – Challenge to – Held – Till 01.01.2014, when Act of 2013 came into force, compensation was neither paid to the account of beneficiaries nor was deposited in Court and in such circumstances, appellants are entitled to receive compensation as per the provisions of the Act of 2013 – Matters remanded back to District Judge to pass fresh award calculating quantum of compensation as per provisions of Act of 2013 – Appeals allowed: *Mayaram Vs. State of M.P., I.L.R. (2017) M.P. *105*

– Section 18 and Succession Act, Indian (39 of 1925), Section 214 – Execution of Award – Succession Certificate – Held – Award holder expired during pendency of execution proceedings – Legal heirs filed application for substitution which was

dismissed for want of succession certificate – Challenge to – Held – Executing Court is not the competent Court to decide the entitlement of petitioners – Trial Court rightly asked petitioner to produce succession certificate – No infirmity in impugned order – Petition dismissed: *Lalji Vs. State of M.P., I.L.R. (2018) M.P. *104*

– Sections 18, 50 & 54 – Enhancement of Compensation – Opportunity of Hearing to Local Authority – Held – It is the Local Authority who has to pay the enhanced compensation, who was not even made a party to land acquisition proceedings, before Reference Court and in first appeal before this Court – Section 50 gives right of hearing to Local Authority – Serious prejudice caused to petitioner – Order passed by this Court reviewed and recalled, setting aside the order/award passed in Reference/First Appeal/Lok Adalat and remanding the matter to Reference Court to pass fresh award after giving opportunity of hearing to petitioner – Petition allowed: *M.P. Road Development Corporation Vs. Jagannath, I.L.R. (2020) M.P. 928*

– Section 18 & 54 – Award By Lok Adalat – Review Petition – Maintainability – Held – Judgment passed in First Appeal itself has been found patently illegal and Lok Adalat has passed the award based upon that very judgment – Award of Lok Adalat not sustainable: *M.P. Road Development Corporation Vs. Jagannath, I.L.R. (2020) M.P. 928*

– Section 18 & 54 – Reference to Court and Appeal – Apportionment of compensation amount of the land of share of respondent no. 4 in favour of appellants, merely on the basis of affidavit given by them before Tehsildar – On the basis of which Tehsildar declared present appellants to be the owner of 2/3rd share – Reference Court passed order for apportionment of only 1/3rd share of compensation amount in favour of appellants – Appeal – Held – Order passed by Tehsildar is non est in the eye of law as under the Transfer of Property Act, gift can be made by owner of the land only by registered sale deed and not by oral expression – Therefore, Tehsildar has no right to transfer the land of respondent No. 4 in the appellants' name – There is no other document in favour of the appellants – Findings of reference court affirmed – Appeal dismissed: *Anjani Prasad (Dead) through L.Rs. Ram Shiromani Tiwari Vs. State of M.P., I.L.R. (2017) M.P. 653*

– Section 18 & 54 – Reference to Court – Determination and enhancement of compensation – Maintainability of reference application – Appeal against the order of the Reference Court/District Court whereby the amount of compensation was enhanced – Held – learned court below on the basis of the proved sale deed calculated total price of land in the year 1994 which was acquired on 05.05.2000 – Lower Court, considering the fact of escalation in the price of land per year, considered the rate of escalation by 10 to 15 percent per year with cumulative effect, thereby for more than six years, as in the present case, considered 100% escalation in the price of the land

– Approach of the Court below is not arbitrary – Further held – Filing of application u/S 18 of the Act for reference shows that compensation was received under protest – Person cannot be deprived to get appropriate compensation of his property merely on the hyper technical ground that person has not expressed his protest in writing – Reference application was maintainable – Appeal dismissed: *Executive Engineer Grah Niraman Mandal Vs. Chain Singh, I.L.R. (2017) M.P. *48*

– Section 23 – Amendment and enhancement of claim – It is for the Court to determine the market value and compensation depends upon market value established by evidence – If land owner out of ignorance claims lesser amount, that cannot be held against him to award an amount lesser than the market value: *State of M.P. Vs. Ramlal, I.L.R. (2016) M.P. 1456*

– Section 23 – Determination of compensation and market value of land – Sale deeds pertaining to different transaction are relied upon, the transaction representing the highest value is required to be preferred unless strong circumstances for taking different course – Averaging of various sale deeds for fixing compensation is not proper course of action – For determining market value of larger area, sale deed of smaller area can be considered, if no other cogent material available – Suitable percentage is to be deducted: *State of M.P. Vs. Ramlal, I.L.R. (2016) M.P. 1456*

– Section 23(1-A) – Interest on Market Value of the acquired land – Determination – Notification published in official gazette dated 21.09.1990 – Date of taking possession of land is 01.06.1989 – Interest is payable only on market value of acquired land from date of taking possession of land or from the date of the publication of the notification under sub-Section (1), whichever is earlier – Both the respondents/ claimants are entitled to get interest on the market value of the land @ 12% per annum from the date of taking its possession i.e. 01.06.1989: *State of M.P. Vs. Ghanshyam Pathak, I.L.R. (2017) M.P. *61*

– Section 23(1-A) & 23(2) – Amendment – Amount of Interest and Solatium – Enhancement – Held – In the present case, land was acquired in 1979 - Provisions were inserted in the Statute in 1984 – Reference Court passed the judgment in 2000 where proceedings were pending since 1982 – Supreme Court held that in aforesaid circumstances, Reference Court will grant compensation considering the amended provision of the Act – Thus, Reference Court is duty bound to grant interest and Solatium as per amended provision – Claimants entitled for solatium @ 30% instead of 15%: *Shyam Singh (MST.) Vs. State of M.P., I.L.R. (2017) M.P. 1449*

– Section 31 – Deposit of Compensation Amount in Reference Court – Held – If award was passed and land owner refused to accept the amount of compensation awarded then in such cases, amount ought to have been deposited in the reference

Court as per the provisions of Section 31 of the Act of 1894 – Mere deposit of said amount with Land Acquisition Officer or the Collector is not sufficient: *Shushila Bai Vs. State of M.P., I.L.R. (2017) M.P. 2954*

– Section 31 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24: *Purushottam Lal Vs. State of M.P., I.L.R. (2016) M.P. 713 (DB)*

– Sections 31, 32, 33 & 34 – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2): *Parasram Pal Vs. Union of India, I.L.R. (2016) M.P. 2696*

– Section 41 and Rehabilitation Policy 2002, Clause 29(1) – Land acquired by the company – Displaced persons, R-2 to R-6 are deaf and dumb – Held – As per Section 41 of the Act, it is mandatory to provide pension to those persons who attained age of 60 years or above, employment to oustees looking to their eligibility criteria, plots to oustees in rehabilitation colony etc – In the instant case, Collector allotted plot, ordered to pay lumpsum amount of 1.5 lac as well as pension also, but no order for employment was made as per Section 41 of the Act of 1894 and Clause 29(1) of the Policy of 2002 – Respondent directed to provide employment in appellant company to any one of Respondents 4 to 6 as per their eligibility – Further held – If posts are not available, appellant should create post looking to their eligibility – Order passed by Collector and Commissioner is set aside – Matter remanded back to Collector – Appeal allowed: *Hindalco Industries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 1799 (DB)*

LAND REVENUE CODE, M.P. (20 OF 1959)

– Section 16 & 17 – Word "Collector" – Competent Authority – Held – This Court has earlier concluded that the word "Collector" would include "Additional Collector": *Jai Prasad Uikey Vs. State of M.P., I.L.R. (2018) M.P. 2748*

– Section 17(2) – See – National Rural Employment Guarantee Act, 2005, Sections 2(e), 14(2) & 14(3): *Mukesh Rawat Vs. State of M.P., I.L.R. (2018) M.P. *45 (DB)*

– Section 32 – Limitation – Date of Knowledge – Held – For exercising power u/S 32 of the Code, even assuming the period of limitation of 180 days, as per the Full Bench, the same has to be counted from date of knowledge of illegality, impropriety and irregularity – On 21.05.2010, Collector initiated action on basis of report of Tehsildar dated 20.05.2010, i.e on the very next date – Suo motu power exercised by Collector well within time: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 32 – Show Cause Notice – Held – Prima facie stand of government in show cause notice is that land/pond in question was initially registered in 1923-24 as government land which was subsequently converted into private land which is impermissible – Even if jurisdictional error has crept in, petitioners can file their reply alongwith objection before Collector – Petitioner could not point out any provision of Code which prohibits Revenue Court to invoke power u/S 32 of Code – Not a fit case for interference at stage of issuance of show cause notice – Petitioner shall file reply before Collector who will decide the matter on merits in accordance with law – Petition disposed of: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 32 & 50 – Inherent Powers – Held – Provisions of Section 32 and 50 of Code are not analogous/pari materia – Section 32 begins with expression "nothing in this code shall be deemed to limit or otherwise affect the inherent power……." – Such expression are used as legislative device to give inherent or extraordinary power to an authority/Court: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 32 & 116 – Powers – Conflict – Applicability – Held – Powers ingrained u/S 32 is much wider than the nature of remedy available u/S 116 of Code – Section 32 is in no way in conflict with section 116 – Thus, section 116 cannot be an impediment for exercising jurisdiction u/S 32 of Code: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 32 & 117 – Land Records – Presumption – Held – As per section 117, entries in "land records" shall be presumed to be correct until contrary is proved – Such legal presumption is rebuttable – Section 117 does not dispense with proof of fact projected in khasra entries – Such revenue entries are not conclusive proof and its genuineness, correctness and legality can be examined by competent authority: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 43 and Civil Procedure Code (5 of 1908), Section 107 – Powers of Appellate Court – Held – In absence of any other express provision in Code of 1959 which limits the jurisdiction of Appellate Authority, the Appellate Authority under Code of 1959 is also conferred with same powers as are conferred on the original Court: *Prakash Pathya Vs. Bati Bai, I.L.R. (2020) M.P. 2818*

– Section 43 and Civil Procedure Code (5 of 1908), Order 26 Rule 10(A) – Revenue Matter – Applicability of Provisions of Civil Procedure Code – Application for Expert Opinion – Held – Proceedings in Revenue Courts are essentially civil in nature – Principles and fundamentals on which C.P.C. is based certainly govern the procedure followed by Revenue Courts provided the same is not expressly excluded in the Code of 1959 – Revenue Courts are obliged to adopt atleast in principle the said procedures – Petitioner was within his rights to seek expert opinion and Revenue

Court was correspondingly obliged to consider the same on merits rather than dismissing the same as not maintainable – Impugned orders set aside – Petition allowed: *Ramniwas Vs. Omkar Singh, I.L.R. (2018) M.P. 2379*

– Section 44 and Constitution – Article 226 – Scope & Jurisdiction – Held – Section 44 does not provide for an appeal from order of Tehsildar, directly to Collector – Appellant herein, under official capacity of Collector was justified in sending the matter to SDO for deciding the appeal – In writ petition, petitioner has not prayed for any relief of transferring the case from concerned SDO to any other SDO or for direction to Collector to hear appeal on his own – In absence of such relief, Single Judge exceeded its jurisdiction in passing an order in violation of statutory provisions of the Code – Impugned order set aside – Appeal allowed: *Madan Vibhishan Nagargoje Vs. Shri Shailendre Singh Yadav, I.L.R. (2019) M.P. 1981 (DB)*

– Section 49(3) – Power of Appellate Authority – Remand of Case – Held – Appellate authority shall not "ordinarily" remand the case for disposal to any Revenue Officer subordinate to it – Use of word "ordinarily" lays down that unless and until there are exceptional circumstances, appellate authority shall not remand the case: *Chandra Shekhar Dubey Vs. Narendra, I.L.R. (2020) M.P. 2813*

– Section 50 – Revision – Suo motu powers – Limitation – Suo motu proceedings started after five years – Expression "at any time" – Held – Suo motu proceedings are not within time as the expression "at any time" denotes within 'reasonable time': *State of M.P. Vs. Kamal Singh, I.L.R. (2016) M.P. 536*

– Sections 50, 51 & 56 – Power of Revision & Review – Scope & Jurisdiction – Held – Board of Revenue is empowered to exercise the power of revision as well as power of review of any order passed under the MPLRC or any other enactment for the time being in force – Power of Review is not confined to the orders passed only under the MPLRC: *Tukojirao Puar (Deceased) Through L.Rs. Shrimant Gayatri Raje Puar Vs. The Board of Revenue, I.L.R. (2020) M.P. 675*

– Sections 50, 51 & 56 and Ceiling on Agricultural Holdings Act, M.P.(20 of 1960), Section 41 & 42 – Suo Motu Power of Review – Held – When Board of Revenue passed order u/S 41 or 42 of the Ceiling Act, that would be an order passed u/S 56 of the Code by virtue of power conferred u/S 7 of MPLRC by State Government – Board of Revenue can exercise power of review u/S 51 of the Code because revenue authorities appointed under the Code has been borrowed as competent authority under Ceiling Act, hence that authority or Board comes with all the powers given in the Code – No illegality in impugned order – Petition dismissed with cost: *Tukojirao Puar (Deceased) Through L.Rs. Shrimant Gayatri Raje Puar Vs. The Board of Revenue, I.L.R. (2020) M.P. 675*

– Section 50 & 240 – See – Adim Jan Jatiyon Ka Sanrakshan (Vrakshon Me Hit) Adhiniyam, M.P., 1999, Section 9: *Samlu Gond Vs. State of M.P., I.L.R. (2017) M.P. 2684*

– Section 51 – Review of Order – Notice – Opportunity of Hearing – Natural Justice – Petitioner, successful bidder in auction of land for agricultural purpose for year 2017-2018 – On application by Respondent No. 3, Tehsildar referred the matter to SDO seeking permission to review the auction whereby permission was granted and finally auction was cancelled – Challenge to – Held – As per Section 51 of M.P. Land Revenue Code, Board or every Revenue Officer has power of suo motu review the order, however order shall not be varied or reversed unless notice is served on interested party – While exercising powers u/S 51 of M.P. Land Revenue Code, authorities are required to issue notice or give opportunity of hearing to person concerned at the time of obtaining sanction for exercising power of review and before passing an order of review – Impugned orders set aside – Petition allowed: *Siddharth Dev Singh Vs. State of M.P., I.L.R. (2018) M.P. 1464*

– Section 51 and Criminal Procedure Code, 1973 (2 of 1974), Section 145 & 146 – Review – Held – Contention of respondent No. 3 that possession of disputed land was handed over to him in pursuance to proceeding initiated u/S 145 and 146 Cr.P.C. and therefore provisions of M.P. Land Revenue Code are not applicable, cannot be accepted because under Cr.P.C., there is no power of review and hence Tehsildar and SDO can exercise power of suo motu under the Code of 1959 and while exercising the power they would be bound to comply with the provisions of Section 51 of the Code: *Siddharth Dev Singh Vs. State of M.P., I.L.R. (2018) M.P. 1464*

– Section 52(2) – Execution of Order – Period of Stay – Held – Upper Collector has held that execution of order shall not be stayed for more than three months at a time or until the date of next hearing whichever is earlier – Proviso to Section 52(2) rightly interpreted – Further, opportunity of hearing given to petitioner, thus no violation of rights – Interference declined – Petition dismissed: *R.D. Singh Vs. Smt. Sheela Verma, I.L.R. (2020) M.P. 2646*

– Sections 57, 165(7-b) & 257 – Lease Hold Rights – Jurisdiction of Civil Court – Appellants purchased lease hold rights from Bhoomiswami vide sale deeds – On a complaint, SDO found contravention of Section 165(7-b) of the Code of 1959 and declared the sale deeds void ab initio – Appellants filed writ petitions which were dismissed – Challenge to – Held – Land was granted to landless persons on lease by State Government and transfer of such lease lands could only be affected after getting approval from Collector – In the present case, approval from Collector was not sought and therefore such transactions was rightly found to be void as in contravention to

statutory provisions – Further held – State having granted lease of the land had a right over the land as owner – In respect of any decision regarding any dispute of right u/S 57(1) of the Code of 1959 between State Government and any person jurisdiction of Civil Court is barred u/S 257 of the Code of 1959 – Appeals dismissed: *Jaya Rathi (Smt.) Vs. Shri Summa, I.L.R. (2018) M.P. 870 (DB)*

– Section 57(2) & 189 – Jurisdiction of Court – Held – The relief to the effect that decree passed in earlier suit is void and not binding on plaintiff can only be granted by Civil Court and not by Revenue Court – Relief of possession was consequential relief – Court below wrongly held that plaintiff can approach Revenue Court u/S 189 of the Code for obtaining possession – Suit is maintainable: *Jagdish Chandra Gupta Vs. Madanlal, I.L.R. (2019) M.P. 140*

– Section 59(12) & 172 and General Clauses Act, M.P., 1957 (3 of 1958), Section 10 – Penalty – Repeal of Provision – Applicability – Held – Section 59(12) cannot be made applicable to appeals filed by assessee – Where penalty has been imposed prior to omission of Section 172 of Code, the said order would not automatically stand abated on the ground that during pendency of appeal, Section 172 has been repealed – Proceedings be initiated for recovery of penalty, if not yet deposited – Petition dismissed: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2020) M.P. 2166*

– Section 108 & 116 – Land Record – Dispute – Held – If matter is covered u/S 108 of the Code, then, dispute regarding entry in Khasra or in any other land record cannot be entertained u/S 116 of the Code: *Shakuntala (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 824*

– Section 109 & 110 – Mutation – On the basis of sale deed which is subject matter of challenge before Civil Court – Whether mutation proceeding ought to be stalled awaiting decision in Civil Suit – Held – No: *Manish Sharma Vs. Sarvapriya Enterprises, I.L.R. (2017) M.P. *7*

– Section 109 & 110 – Mutation of record – Agreement to sale – No mutation could be carried out by authority: *Kishorilal Tiwari Vs. Kandhilal, I.L.R. (2016) M.P. 512*

– Section 109 & 110 – Mutation of record is permissible only on the basis of sale deed or other admissible documents under the law: *Kishorilal Tiwari Vs. Kandhilal, I.L.R. (2016) M.P. 512*

– Section 115 – Correction of Wrong Khasra Entries – Limitation – Held – Respondents failed to demonstrate any record of date of knowledge of any such fraud – It ought to have come to their knowledge while scrutinizing the entries and

granting Nazool NOC in year 2010/2012 – Impugned order passed in 2017 after a lapse of 7 yrs., is certainly beyond limitation – Full Bench held, a period of 180 days from the date of detection of fault to be a reasonable period for exercise of *suo motu* powers: *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– Section 115 – Correction of Wrong Khasra Entries – Scope & Jurisdiction – Competent Authority – Principle of Natural Justice – Held – The Collector, by directing Tehsildar to record the land as Government land, has usurped the jurisdiction vested in Tehsildar u/S 115 of the Code – Further, such exercise cannot be resorted without providing opportunity of hearing to aggrieved party – Impugned order is gross violation of principle of natural justice and totally without jurisdiction: *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– Section 117 – Adverse Possession – Presumption – Held – Adverse possession is a question of fact – Plaintiff has not filed any document in support of purchase of land – No sale deed or any witness to sale have been examined – Sale is not proved – Revenue records does not establish continuous possession over 30 years on disputed land – No presumption can be drawn u/S 117 of the Code of 1959: *Ramakant Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2699*

– Section 117 – See – Evidence Act, 1872, Sections 68, 69 & 90: *Ramcharan Vs. Damodar, I.L.R. (2017) M.P. 1882*

– Section 131 – Easementary Rights – Adjudication – Competent Authority – Held – Apex Court concluded that Tehsildar, after local enquiry may decide such disputes with reference to previous customs and with due record to the convenience of all parties concerned: *Prakash Pathya Vs. Bati Bai, I.L.R. (2020) M.P. 2818*

– Section 131 – Easementary Rights – Adjudication – Held – Although order of Tehsildar contained infirmities, learned SDO cured the same by directing Tehsildar for local enquiry – Findings of SDO based on finding/report given by Tehsildar, equally based on statement of witnesses who deposed regarding customary right of respondent regarding use of way – SDO also considered previous customs and convenience of parties – No reason to disturb: *Prakash Pathya Vs. Bati Bai, I.L.R. (2020) M.P. 2818*

– Section 131 – Easementary Rights – Adjudication – Ingredients – Held – After satisfying necessary ingredients of Section 131 namely (i) local enquiry, (ii) decision with reference to previous custom and (iii) convenience of parties, SDO decided that respondent is entitled to get right of way: *Prakash Pathya Vs. Bati Bai, I.L.R. (2020) M.P. 2818*

– Section 131 & 132 – Right of way and penalty for obstruction of way – Tehsildar passed an interim order – On an application seeking compliance of interim

order, Tehsildar imposed fine of Rs. 1000/- and directed Revenue Inspector for opening of road – Held – Section 132 speaks about final decision on merit – Interim order cannot be treated as decision – Existence of decision u/S 131 of M.P. Land Revenue Code is a sine qua non for exercising power u/S 132 of Code – Matter remitted back to Tehsildar to proceed in accordance with law – Petition allowed: *Major Singh Vs. State of M.P., I.L.R. (2016) M.P. *29*

– Sections 158, 185, 189 & 190, Madhya Bharat Zamindari Abolition Act (13 of 1951), Sections 2(c), 4 & 37 – Bhumiswami Rights – Khud-Kasht Land – Held – U/S 37(1) of Abolition Act, "pakka tenancy" rights were conferred upon only on such a proprietor having land under his possession as Khud-Kasht land as per Section 2(c) r/w Section 4(2) and there had to be personal cultivation by Zamindars himself or through employees or hired labours – In instant case, as per khasra entries before date of vesting, land not recorded as Khud-Kasht of erstwhile Zamindars and is recorded as "Bir Land" i.e "grassland" – No personal cultivation over the said land – Mandatory requirement of Section 4(2) not fulfilled – Such land not saved from vesting u/S 4(1) to State government automatically, free from all encumbrances – Impugned order set aside – Appeal allowed: *State of M.P. Vs. Sabal Singh (Dead) By LRs., I.L.R. (2020) M.P. 751 (SC)*

– Section 158(d)(ii) – Bhumiswami Rights – Held – In revenue records, disputed lands are recorded as "Tank" since 1958 and even before – Plaintiff's witnesses also establishes that disputed land is a "Tank" used for nistar purposes by villagers – Plaintiff's father or Plaintiff not entitled the conferral of Bhumiswami rights – Courts below rightly recorded the findings and dismissed the suit – Appeal dismissed: *Ramakant Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2699*

– Section 158(1)(d)(i) – See – Rewa State Land Revenue and Tenancy Code, 1935, Section 44: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Sections 158(3) & 165(7-a), (7-b) – Lease transfer by sale without permission of authority – In view of Section 165(7-a) as it existed on the date of transaction, prior permission was a mandatory pre condition and no prior permission having been sought even if the holding is beyond ten years, the decision arrived at by the Collector that the sale was a nullity ought not to have been interfered with – Petition allowed: *Mandu Vs. State of M.P., I.L.R. (2016) M.P. 1298*

– Section 164 and Hindu Succession Act (30 of 1956) – Amendment of 2005 – Devolution of rights after the death of the holder – Held – The holder of divided HUF property can dispose of the property in any manner as he deems fit but his successor will have interest over the property only when he expires and the property held by him still remains whereas in case he sells off the entire property then the

question of succession does not arise: *Sushila Bai Vs. Smt. Rajkumari, I.L.R. (2017) M.P. 662*

– Section 172 – Commercial Use of Land – Permission & Diversion – Held – Land was used by petitioner for marriage and other functions without diversion and without obtaining any permission – Petitioner also failed to discharge the burden to prove that he was not charging any rent – Marriage garden is being run contrary to provisions of law – Impugned order was rightly passed – Petition dismissed: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2020) M.P. 2166*

– Section 172 – Show Cause Notice – Abatement of Proceedings – Held – Notice u/S 172 issued on 21.12.15 whereas Section 172 has been omitted by M.P. Act No. 23/2018 – Show Cause notice rightly issued: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2020) M.P. 2166*

– Section 178 – Partition – Ancestral /Joint Property – Held – If property is ancestral or joint property, only then the same can be partitioned amongst co-owner – Partition presupposes that properties in question are joint or ancestral – An individual holding cannot be put for partition u/S 178 of the Code of 1959 – Further held, by way of partition, owners of property cannot exchange his property with another owner of another property: *Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi, I.L.R. (2020) M.P. 914*

– Section 178 – Partition – Procedure – Held – Filing of application u/S 178 by respondents, itself shows that property was still joint/ancestral in nature and earlier registered "Sale Deed" and "Will" were sham documents and were never intended to be acted upon – In mutation proceedings and partition proceedings, no notice was issued to petitioner – Both orders were obtained behind her back – No adverse inference can be drawn against petitioner – Petition allowed: *Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi, I.L.R. (2020) M.P. 914*

– Section 178 – Partition Proceedings – Stay Order – Ingredients – Held – Pendency of civil suit as well as temporary injunction are two necessary ingredients for staying further proceedings of partition – In present case, second appeal is pending where there is no interim orders of the Court – In absence of any stay, revenue authorities are not under obligation to stay further proceedings – Petition dismissed: *Virendra Singh Vs. Krishnapal Singh, I.L.R. (2020) M.P. *16*

– Section 178 – Partition Proceedings – Fard Batwara – Held – Fard Batwara was neither published nor it contains the signatures of respondents, thus order of partition was defective and illegally passed by Tehsildar – Case rightly remanded to revenue authorities – Petition dismissed: *Chandra Shekhar Dubey Vs. Narendra, I.L.R. (2020) M.P. 2813*

– Section 178 – See – Civil Procedure Code, 1908, Section 10: *Chinda Bai @ Baku Bai Vs. Govindrao, I.L.R. (2017) M.P. *88*

– Section 178 and Specific Relief Act (47 of 1963), Section 34 & 42 – Suit for Declaration without any further prayer for Partition – Maintainability – Held – If a co-sharer who is denied of his title as a co-sharer, files a suit for declaration of title and permanent injunction with no intention to get the property separated, he may file suit without seeking further relief of partition and such suit is maintainable in eyes of law and cannot be dismissed in view of Section 34 and 42 of the Act of 1963 – If plaintiff is not interested in actual separation of property, then he cannot be compelled to file a suit for partition – Further held – Even in a suit for partition, rights of parties are to be determined and thereafter properties has to be separated by metes and bounds – In present case, only agricultural land is the disputed property, thus plaintiff could have filed an application u/S 178 of the Code of 1959 for partition of the said land – Appeals dismissed: *Karelal Vs. Gyanbai Widow of Keshari Singh, I.L.R. (2018) M.P. 1687*

– Section 178 & 250 – Partition – Jurisdiction – Competent Authority – Held – Suit land is agricultural land and u/S 178, Tehsildar is competent authority to pass order of partition – Jurisdiction of Civil Court is barred – Suit is not maintainable for relief of partition: *Sheela Vs. Bhagudibai, I.L.R. (2019) M.P. 1258*

– Section 178(1) & 178(2) – Partition Proceedings – Question of Title – Held – As per Section 178(1), if any question of title is raised, Tehsildar shall stay the proceeding before him for three months to facilitate institution of civil suit for determination of title – If Tehsildar fails to stay proceedings, it would be a violation of mandatory provision of proviso to Section 178(2) of the Code: *Chandra Shekhar Dubey Vs. Narendra, I.L.R. (2020) M.P. 2813*

– Section 182 & 248 – Lease Deed – Cancellation – Held – Lease deed cancelled on the ground of violation of lease deed and its non-renewal – Held – No lease deed in existence in respect of the disputed property and the one produced by respondent is related to different piece of land – Property is under absolute ownership of Church and State Government trying to grab the land acting like a mafia – Impugned order quashed – Petition allowed with cost of one lakh: *Nagpur Diocesan Trust Association Vs. State of M.P., I.L.R. (2019) M.P. 2291*

– Section 185 & 190 – Limitation – Held – It is settled law that order without jurisdiction can be assailed at any point of time – Since order of Tehsildar was without jurisdiction, it can be challenged at any point of time – SDO should not have dismissed the appeal on ground of limitation and should have decided the same on merits: *Venishankar Vs. Smt. Siyarani, I.L.R. (2020) M.P. 1144*

– Section 185 & 190 and Land Revenue Code, M.P., 1954 (2 of 1955) – Bhumiswami Rights – Jurisdiction of Tehsildar – Held – Section 190 deals with conferral of right of Bhumiswami on occupancy tenant – Occupancy tenant in Mahakoshal region can only be a person who is in possession of land before coming into force of the Code of 1954 – Respondent was in possession since 1973-74 and her name was never recorded as occupancy tenant – Applying provision of Section 190 and declaring her to be bhumiswami is absolutely illegal and without jurisdiction – Impugned order set aside – Revenue Authority directed to record name of petitioner in revenue records as owner – Petition allowed: *Venishankar Vs. Smt. Siyarani, I.L.R. (2020) M.P. 1144*

– Sections 237(1)(b), 237(2) & 237(3) – Allotment of land by Collector – To District Trade and Industries Centre, Katni – Further – Allotment to private respondent for industrial purpose – Gram Panchayat raised objections that use of land cannot be altered for purpose other than as specified in Section 237 – In between sub-section (3) of Section 237 amended on 30.12.2011 – Whether diversion under Section 237 of the code of the land covered by clause (b) of sub-section (1) of Section 237 for industrial purposes was permissible on 05.01.2011 – Held – Keeping in mind the statutory provisions as in vogue at the relevant time and also unamended diversion Rules, the Collector was invested with limited authority to divert such land only for Abadi or agricultural purposes and no other purpose – Orders dated 05.01.2011 and 14.06.2011 set aside – In case of fresh proposal Collector is directed to consider it afresh as per the law in force – If proposal is rejected, State authorities to restore status quo ante (as pasture, grass bir or fodder reserve) as on 05.01.2011 removing all the structures constructed thereon – Petition disposed of: *Gangaram Loniya Chohan Vs. State of M.P., I.L.R. (2016) M.P. 1359 (DB)*

– Section 237(3) – Grass land reserved – None of the authorities have power to divert the same: *Ravi Shankar Sarathe Vs. State of M.P., I.L.R. (2016) M.P. 404*

– Sections 237(3) & 237(4) – Distinction – As amended on 30.12.2011 – Held – Sub-section (4) of Section 237 deals with all other unoccupied lands referred to in Section 237(1) clause (a), (c) to (k) except clause (b), whereas sub-section (3) of Section 237 deals specifically with the land covered by clause (b) of sub-section (1) of Section 237 relating to pasture, grass bir or fodder reserve, so sub-section (4) is a general provision dealing with other situations, excluding the situations covered by sub-section (3) of Section 237: *Gangaram Loniya Chohan Vs. State of M.P., I.L.R. (2016) M.P. 1359 (DB)*

– Section 247(7) – Penalty – Permission was granted to the Petitioner to level the land by removing Murom and soil and to use it for filling the pits in the same

land and in case of surplus, to transport it for specified use with prior permission – At the end of term of permission, Panchnama was drawn and it was found that unauthorized extraction was done contrary to restricted permission granted for levelling of land and panchnama clearly indicates that extraction was done to the extent of 120 metres wide and 15 metres deep which means that petitioner had extracted minor mineral to the extent of 7200 cubic metres for some other purpose – Findings recorded by Addl. Collector does not call for interference – Fine amount double the value of the mineral was rightly imposed by Appropriate Authority: *Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 489 (DB)*

– Section 247(7) and Minor Mineral Rules, M.P. 1996, Rule 53(5) – Penalty – Jurisdiction – Amendment – Retrospective and Prospective Application – Held – Penalty imposed on petitioner by SDO for illegally extracting mineral outside the granted lease area – Challenge to – Held – Vide amendment dated 18.05.17, power delegated to SDO to initiate proceedings under Rule 53 and impose fine/penalty – In present case SDO imposed penalty on basis of panchnama dated 27.08.16 & 09.12.16 whereas, Rule 53 was amended w.e.f. 18.05.17 – As per amended Rule, SDO is competent to pass the impugned order (being procedural part) but he has acted illegally imposing penalty as per amended Rule 53 treating it to have retrospective effect/ operation – Penalty part of impugned order is quashed – Petitions partly allowed: *Vijay Luniya Vs. State of M.P., I.L.R. (2018) M.P. 2107 (DB)*

– Section 247(7), Minor Mineral Rules, M.P. 1996, Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 – Prosecution & Penalty Provisions – Held – Under Code of 1959, penalty is imposable on market value of minerals extracted or removed whereas under Rules of 1996, Rule 53 imposes penalty on amount of royalty payable on illegally extracted minerals – Penalty in terms of Rule 53 is legal and valid till such time it does not exceed four times of the market value of minerals extracted, which as per Rule of 1996 would mean minor minerals – Extraction or removal of minerals other than minor minerals shall continue to attract penalty in terms of Section 247(7) of the Code of 1959 apart from prosecution under Rule 18 of the Rules of 2006: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Section 250 – Restoration of possession – Maintainability – Application u/ s 250(2) of the M.P. Land Revenue Code is not maintainable when the civil suit has already been filed – Petition allowed: *Shree Vaishnav Sahayak Trust Vs. State of M.P., I.L.R. (2016) M.P. 80*

– Section 253 – See – Adim Jan Jatiyon Ka Sanrakshan (Vrakshon Me Hit) Adhiniyam, M.P., 1999, Section 4 & 9(2): *Samlu Gond Vs. State of M.P., I.L.R. (2017) M.P. 2684*

– Section 257 – See – Civil Procedure Code, 1908, Section 9: *Kishorilal Tiwari Vs. Kandhilal, I.L.R. (2016) M.P. 512*

– Section 257 – See – Mines and Minerals Rules, 1996, Rule 53: *Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 489 (DB)*

LAW OF TORTS

– Applicability – The expressions malfeasance, misfeasance and non-feasance would apply in those limited cases where the State or its officers are liable not only for breach of care and duty but it must be actuated with malice or bad faith: *Bank of Maharashtra Vs. M/s. ICO Jax India Deedwana Oli Lashkar Gwalior, I.L.R. (2017) M.P. 645*

– Medical Negligence – Compensation – Entitlement – Appellant undergone an operation under a Family Planning Programme in a government hospital whereby, evidence establishes that because of negligence of staff at hospital, she developed gangrene in her hand which finally resulted into amputation of her hand above elbow – Civil Suit was dismissed – Challenge to – Held – She was a daily wager and used to do stitching work – Documents on record proves 50% disability – Appellant has proved her case based on the documents which are not disputed by government, thus she is entitled for compensation – It's a State run hospital and thus State is liable to pay compensation – State directed to pay compensation of Rs. 1,85,000 (as claimed) alongwith interest @ 9% per annum from date of filing of suit: *Zarina (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2194*

– Medical Negligence – Onus of Proof – Held – Once initial burden has been discharged by patient making out a case of negligence on part of hospital or doctor, the onus then shifts on hospital or doctors and it is for them to satisfy the Court that there was no lack of care of diligence – Appellant successfully discharged the burden of establishing negligence: *Zarina (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2194*

– Public Office – Tort of Misfeasance – Damages – Entitlement – Petitioner purchased a land in State auction, conducted to recover tax dues from land owner – Subsequently, land owner went into litigation whereby High Court decreed the suit land in his favour – Petitioner claiming exemplary damages against State – Held – Act of auction was done in discharge of sovereign function or was an act of the State – Arbitrariness by State is not apparent – State auctioned the property with bonafide belief – Procedural lapses by State cannot give rise to a cause of action under Article 226 of Constitution for demanding damages in form of tortious liability – Petition dismissed: *Saida Bi (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1055*

LEGAL METROLOGY ACT, 2009 (1 OF 2010)

– Sections 48(5) & 51 – See – Criminal Procedure Code, 1973, Section 482: *Balchand Gupta Vs. State of M.P., I.L.R. (2017) M.P. 184*

LEGAL SERVICES AUTHORITIES ACT (39 OF 1987)

– Section 2(d) – See – Civil Procedure Code, 1908, Section 89(2)(d): *Mohar Singh Vs. Gajendra Singh, I.L.R. (2020) M.P. *18*

– Section 20 – Lok-Adalat – "Compromise" or "Settlement" – Powers of disposal of cases by the Lok Adalat relates to only settlement between parties through compromise and no case can be disposed of without compromise or settlement between the parties: *Ram Milan Dubey Vs. Ku. Vandana Jain, I.L.R. (2017) M.P. 952*

– Section 21 – See – Constitution, Article 226/227: *Jahar Singh Lodhi Vs. Ramkali, I.L.R. (2017) M.P. 1462*

LIFE INSURANCE CORPORATION OF INDIA (EMPLOYEES) PENSION RULES, 1995

– Rule 2(k) – Definition of 'Family' – Entitlement of Pension – Husband and son of deceased claiming pension – Earlier Writ Petition filed by husband seeking pension for the son was disposed of with a direction to respondent to pass a suitable cogent order whereby in compliance, respondent passed the impugned order in which pension was sanctioned in favour of son and son was directed to obtain NOC from the petitioner No.1 (husband of deceased) – In the present petition, Plea of estoppel was raised by the respondent on the ground that husband has waived his right in the earlier petition – Held – Merely because in the order of the earlier writ petition it is recorded that petitioner was claiming pension for son, cannot deprive the petitioner to seek pension – Under the Pension Rules, definition of 'Family' includes husband in case of female employee and he is entitled for pension because he falls in the ambit of 'Family' – It is trite law that no estopple operated against the statute – Respondents depriving petitioner husband from pension is impermissible as per Rules – Petition allowed – Respondents directed to pay pension to petitioner husband in accordance with Pension Rules along with interest @ 12% p.a. and cost of Rs. 5000: *Prabhat Pathak Vs. Life Insurance Corporation, I.L.R. (2017) M.P. 549*

LIMITATION ACT (36 OF 1963)

– Section 3 & 29(2), Prevention of Corruption Act (49 of 1988), Section 13(1)(e) and Special Courts Act, M.P. 2011 (8 of 2012), Sections 9(3) & 17 – Applicability of provision of Limitation Act – Delay in filing appeal – High Court can

consider the prayer for condonation of delay – The appellant has filed an affidavit in support of application – No counter affidavit has been filed – Sufficient cause has been shown by the appellant and delay seem to be bonafide – Delay condoned: *State of M.P. Vs. Radheshyam, I.L.R. (2016) M.P. 1171 (DB)*

– Section 5 – Application for condonation of delay filed on 10.12.2014 and appeal filed on 8.12.2014 – Date of knowledge of order is 3.12.2014 – Limitation period is of 5 days – Whether in such circumstances appeal is barred by time – Held – No, merely because the application for condonation of delay has been submitted on a later date explaining the sufficiency of cause, it shall not render the appeal barred by time itself and the said application will relate back to the date of filing of the Appeal – Appellate Court has not committed any error of law in entertaining the Appeal to be within time: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Section 5 – Condonation of delay – Delay has not been properly explained even considering the fact that the first appeal was dismissed by the lower Court on the ground of limitation – Colossal delay has occasioned again at the time of filing the second appeal – Such high handedness and bureaucratic attitude cannot be permitted at any costs – Appeal dismissed for want of limitation: *State of M.P. Vs. Shrimant Tukojirao Panwar, I.L.R. (2016) M.P. 856*

– Section 5 – Condonation of delay – Delay of 1265 days – After passing the award on 18.04.2012 the execution proceeding has been filed before the Claim Tribunal on 21.06.2012 – Appellant has also filed vakalatnama in M.A. No. 742/2012 pending before this Court, as respondent no. 2 – In such circumstances it cannot be said that the appellant had no knowledge about the award passed – Appeal is miserably barred by limitation – Neither sufficient cause is shown nor the same is found to be to the satisfaction of this Court – Application for condonation of delay is dismissed – Consequently, Appeal is also dismissed: *Jahoor Khan Vs. Ramvaran, I.L.R. (2017) M.P. 93*

– Section 5 – Condonation of Delay – Non-filing of Application – Effect – Held – Non-filing of application for condonation of delay is a curable defect, appellant can be permitted to file such application at a later stage – Appellate Court after noticing such, should have granted an opportunity to appellant to file application u/S 5 of the Act of 1963 – Further, until and unless delay is condoned, it cannot be said that there was any appeal in eyes of law – Impugned Judgment and decree set aside – Appeal remanded to appellate Court – Second appeal allowed: *Man Khan Vs. Dr. Keshav Kishore, I.L.R. (2019) M.P. 1854*

– Section 5 – Condonation of Delay – Liberal Approach by Court – Held – As per Apex Court, approach of Courts in condoning delay should be liberal and

litigant cannot be expected to explain each and every day's delay – In present case, from date of knowledge of judgment, delay in filing applications is less than one month which is not inordinate – Cause shown for delay cannot be said to be untrustworthy – Court below has taken a rigid view of the matter rejecting the application filed alongwith affidavits – Application allowed: *Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies, I.L.R. (2017) M.P. 3015*

– Section 5 – Condonation of Delay – Sufficient Cause – Delay of more than 10 years – Appellant submitted that counsel did not inform him about the case from 1996 till 2009 – Held – Appellant was expected to seek information about the progress of his case from his counsel time to time as the case was fixed for evidence – It is also not possible that counsel of appellant did not informed him despite seven adjournments taken by the counsel – For more than 10 years, appellant remained silent which shows his lack of interest in the case, his negligence and lack of bonafide – Appellant himself neglected to participate in the suit and without any reasonable cause avoided to enquire about his case which shows that he himself was not diligent in prosecution of his case – Delay not properly explained – No sufficient cause is made out for condonation of delay – Application for condonation of delay and Appeal dismissed: *Gulab Chand Vs. Sardar Patel, I.L.R. (2017) M.P. *49*

– Section 5 – Condonation of Delay – Sufficient Grounds – Held – For explaining delay of one year and two months, appellants merely stated that since they were not aware of dismissal of their suit, they could not file appeal within period of limitation – Not sufficient ground to condone the delay – Being plaintiff, it was the duty of appellants to keep a track of their suit – Nowadays everybody is having mobile phone and other technical facilities to contact their counsel – Appellate Court rightly dismissed the application – Appeal dismissed: *Lokpal Singh Vs. Matre, I.L.R. (2019) M.P. *36*

– Section 5 – Limitation to file First Appeal – Condonation of delay – Explanation – Decree by Trial Court in favour of respondent – State Government filed first appeal after a period of more than 8 yrs. which was dismissed as time barred – Held – No explanation, not a single word has been mentioned for the inordinate delay – Judgment was pronounced by trial Court in presence of Counsel of appellant – First appeal rightly dismissed as time barred – Appeal dismissed: *State of M.P. Vs. Sureshkumar, I.L.R. (2018) M.P. 2915*

– Section 5 – See – Civil Procedure Code, 1908, Section 100: *Sampatbai Vs. Smt. Kamlabai, I.L.R. (2018) M.P. *35*

– Section 5 – See – Penal Code, 1860, Section 327/34 & 323/34: *Aatamdas Vs. State of M.P., I.L.R. (2019) M.P. *1*

– Section 5 – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2: *State of M.P. Vs. Moolchand Upadhyay, I.L.R. (2016) M.P. 5 (DB)*

– Section 5 – Sufficient Cause – Ground – Held – Word "sufficient cause" has been held to be construed liberally but Court cannot become oblivious of fact that a successful litigant has acquired certain rights on basis of judgment and decree and a lot of time is consumed at various stages of litigation: *Chhotelal Gupta Vs. Lahori Prasad Pasi, I.L.R. (2018) M.P. 2965*

– Section 5 – Sufficient Cause – Knowledge of Judgment/Decree – Burden of Proof – Ex-parte decree of eviction against applicant – Held – Burden lies on applicant to prove that he was not having knowledge of judgment/decree and he has not refused the summons of execution case – In absence of specific pleadings and evidence to dislodge the fact of knowledge of decree, it cannot be accepted that he was not having knowledge of decree dated 20.09.2012 especially when certified copy was received by his counsel on 30.12.2012 – Bonafide and sufficient ground not established by applicant rather it shows his negligence in prosecuting the case – Revision dismissed: *Chhotelal Gupta Vs. Lahori Prasad Pasi, I.L.R. (2018) M.P. 2965*

– Section 5 – Sufficient cause – While considering the application for condonation of delay, liberal approach has to be adopted, but while adopting liberal approach, the Court cannot ignore principle of law that law comes to rescue all vigilant litigants: *Ratanlal Vs. Shivlal, I.L.R. (2016) M.P. 3345*

– Section 5 and Panchayat Nirvachan Niyam, M.P. 1995, Rule 12(5) – Undated order passed by Registration Officer – Date of knowledge is 3.12.2014 – Appeal filed on 8.12.2014 before Collector – Limitation period is of 5 days – Held – As the order of the Registration Officer was undated, so the computation of limitation period will be done from the date of knowledge i.e. 3.12.2014 & appeal has been filed on 8.12.2014, so the appeal has been filed within the limitation period of 5 days: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Section 5, Commercial Tax Act, M.P. 1994 (5 of 1995), Section 70(1) and Entry Tax Act, M.P. (52 of 1976), Section 13 – Reference Application – Condonation of Delay – Sufficient Cause – Delay of 4 months in filing reference application – Held – "Sufficient cause" should be such so as to do substantial justice between parties – Sufficient cause depends upon facts of each case and no hard and fast rule can be applied – Sufficient cause of delay explained by petitioner – Delay condoned – Petition allowed: *Hawkins Cookers Ltd. (M/s.) Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (2019) M.P. 2261 (DB)*

– Section 5, Special Courts Act, M.P. 2011 (8 of 2012), Section 11 and Special Courts Rules, M.P., 2012, Rule 10(2) & (3) – Condonation of Delay – Held – In instant case, initial period of 30 days has been extendable by further 15 days – When specific provision for extension of time has been made under Statute, provision of Section 5 of Limitation Act will not be applicable: *Kailash Vs. State of M.P. Through SPE, Lokayukt, Ujjain, I.L.R. (2019) M.P. 911*

– Section 5 & 14 – Condonation of Delay – Suit for arrears of rent and eviction decreed in favour of respondents/plaintiffs – Appellant/defendant filed appeal whereby appellate Court dismissed the same as time barred – Second Appeal – Held – There is delay of three days – Judgment and decree passed on 28.04.16, appellant got information from lawyer on 25.05.16, he made application for certified copy on 30.05.16 just after 5 days from date of knowledge and received the copy on 21.06.16 – No inordinate and deliberate undue delay in making application by the appellant – Application for certified copy and delivery of the same was done through counsel and not by him personally – Appellant living in a remote area and certainly it was not possible to get day to day information from his counsel – Appeal allowed – Matter remitted back to lower Appellate Court for deciding the first appeal on merits, treating the same to be within limitation: *Ram Sewak Prajapati Vs. Shiv Kumar Yadav, I.L.R. (2017) M.P. 1875*

– Section 5 & 14 – Non-Diligence – Sufficient Cause – Held – Non-diligence during the period of time taken regarding making application for obtaining certified copy and not receiving the same on the date when he was asked to receive the certified copy cannot be grounds to reject application u/S 5 of the Act of 1963 – Apex Court held that if such persons residing in remote areas, it constitutes 'sufficient cause' for condoning delay and a lenient view ought to have been taken: *Ram Sewak Prajapati Vs. Shiv Kumar Yadav, I.L.R. (2017) M.P. 1875*

– Section 5 & 29 – See – Municipalities Act, M.P., 1961, Section 20(3): *Sushila (Smt.) Vs. Rajesh Rajak, I.L.R. (2018) M.P. 1961*

– Section 5 & 29(2) – See – Railway Claims Tribunal Act, 1987, Section 23(1),(3): *Kujmati (Smt.) Vs. The Union of India, I.L.R. (2016) M.P. 1143*

– Section 5 & 29(2) and Panchayat Nirvachan Niyam, M.P. 1995, Rule 12(5) – Exclusionary Clause – Whether provisions of Sections 4 to 24 are applicable in terms of Section 29(2) of the Limitation Act, 1963, as there is no exclusionary provisions in the Nirvachan Rules, 1995 – Held – Yes: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Section 9 – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 2(d) & 7-B(1)(b), Proviso: *Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2018) M.P. 2668 (FB)*

– Section 14 – Exclusion of time – Requisite – There should be liberal approach to advance cause of justice, if there is mistaken remedy or selection of wrong forum – Both the proceedings must relate to same matter in issue – Prosecution of earlier proceeding must show due diligence and good faith: *Commissioner, M.P. Housing Board Vs. M/s. Mohanlal and Company, I.L.R. (2017) M.P. 1 (SC)*

– Section 14 and Arbitration and Conciliation Act (26 of 1996), Sections 11 & 34 – Exclusion of time – Dispute referred to Arbitrator – Parties participated – Award passed – Respondent moved High Court for appointment of arbitrator u/S 11 but not filed objection u/S 34(2) – High Court declined to appoint arbitrator – Then respondent filed objection on 26.09.2011 u/S 34(2) challenging award dated 11.11.2010 alongwith application u/S 14 of Limitation Act – District Court and High Court allowed exclusion of time consumed in prosecuting the case – Held – Here is absence of good faith – Respondent could have instead of participating in Arbitration proceeding, taken steps for appointment of arbitrator or he could have filed objection u/S 34(2) within permissible parameters, but he chose an innovative path – This is neither good faith nor diligence – Exclusion of time not granted: *Commissioner, M.P. Housing Board Vs. M/s. Mohanlal and Company, I.L.R. (2017) M.P. 1 (SC)*

– Section 21(1) – See – Civil Procedure Code, 1908, Section 152 & 153: *Ramesh Joshi Vs. The Government of M.P., I.L.R. (2019) M.P. 2281*

– Section 27 – Possession – Held – It was in the knowledge of appellants that plaintiffs/respondents were in possession since 1950 as owner – Right of appellants to get the possession back within 12 years, is ceased by provisions of Section 27 of the Act: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Section 65 & 66 – Injunction Suit – Counter Claim for Possession – Plaintiff claiming injunction – Respondent/defendant though titleholder, filed a counter claim for possession – Apex Court has concluded that in case a suit is filed claiming injunction, counter claim for possession can also be entertained – Appellate Court was justified in allowing counter claim with aid of Section 65 of the Act of 1963: *Mishrilal Through Legal Heirs Vs. Samarthmal, I.L.R. (2018) M.P. 2909*

– Article 6, 8, 59 & 60 – See – Civil Procedure Code, 1908, Order 32 Rule 3(A): *Chironji Bai Vs. Narayan Singh, I.L.R. (2017) M.P. 1135*

– Article 54, Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) and Specific Relief Act (47 of 1963), Section 41 – Specific Performance of Contract – Limitation – Held – As per Article 54 of Act of 1963, suit for specific performance is required to be filed within 3 years from the date fixed for performance, and where there is no specific date mentioned in agreement, suit shall be filed within a period of

3 years from the date when plaintiff notices refusal of performance – In instant case, agreement to sale is dated 27.06.2002 and advance payments were allegedly accepted on 2002, 2004 & 2010 and suit was filed in 2013 – Whether time was essence of the contract and the question of limitation is mixed question of law and fact and can only be adjudicated after parties lead evidence and cannot be addressed in application under Order 7 Rule 11(d) C.P.C. – Application rightly rejected – Revisions dismissed: *Himmatlal Vs. M/s. Rajratan Concept, I.L.R. (2018) M.P. 2035*

– Article 58 – See – Civil Procedure Code, 1908, Order 23 Rule 1(4): *Mohd. Hasan Vs. Abu Bakar, I.L.R. (2019) M.P. 423*

– Article 58 – Suit for Declaration – Held – For relief of declaration, as per Article 58, suit should be within 3 years when the right to sue first accrues – Bi-party mutation proceedings disposed in favour of appellants/defendants in 1970 by Board of Revenue – Suit filed by respondents /plaintiffs in 1977 is time barred – Judgment and decree of Courts below to the extent of declaration of title are set aside: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Article 59 – Limitation to File Suit – Plaintiff/respondent challenging the sale deeds dated 26.04.82 and 24.09.82 in a civil suit filed on 27.03.92 is barred by limitation: *Ramgopal Through L.Rs. Vs. Smt. Jashoda Bai Through L.Rs., I.L.R. (2017) M.P. 2978*

– Article 59 – Limitation to file suit – Revision against dismissal of application filed by the petitioner/defendant regarding disposal of preliminary issue of limitation – Held – Registered sale deed on 23.01.2010 in favour of petitioner – Respondent/ plaintiff filed a suit on 03.02.2016 to declare the sale deed null and void, nearly after lapse of 6 years – Sale deed reveals that plaintiff no.1 and wife of plaintiff no.2 are the attesting witnesses – They were well aware with the sale deed and its nature – Certified copy of the sale deed was also obtained by them on 16.07.2010 – Limitation to file suit is 3 years – Suit is barred by limitation under Article 59 of the Limitation Act – Suit dismissed as barred by limitation – *Revision allowed: Anita Jain (Smt.) Vs. Dilip Kumar, I.L.R. (2018) M.P. *3*

– Article 65 – Adverse Possession – Held – Plaintiff cannot claim title by way of adverse possession – Trial Court committed error in holding the title on basis of adverse possession as no issue in this regard was framed nor necessary ingredients of adverse possession were discussed: *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

– Article 65 – Adverse Possession – Held – Supreme Court concluded that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of Limitation Act – No bar under the Limitation Act to sue on aforesaid basis in case of infringement of rights of plaintiff: *Pramod Kumar Jain Vs. Smt. Kushum Lashkari, I.L.R. (2020) M.P. 163*

– Article 65 – Limitation – Provides 12 years of limitation and limitation starts when the possession of the defendant becomes adverse to the plaintiff: *Pramod Kumar Vs. Saiyad Rajiy Sultan, I.L.R. (2016) M.P. 850*

– Article 65 – Suit was filed for possession of immovable property – Admittedly the suit is governed by this Article: *Pramod Kumar Vs. Saiyad Rajiy Sultan, I.L.R. (2016) M.P. 850*

– Article 97 – Applicability – Suit for Right of Pre-emption – Held – When there is a specific provision under Article 97 which provides limitation of one year for filing suit claiming right of pre-emption, then general principle of limitation will not be applicable: *Kailashchandra (Dr.) Vs. Damodar (Deceased) Through LRs., I.L.R. (2019) M.P. 2327*

– Article 100 – Applicability – Held – Present suit is not for declaration of the order of the Board of Revenue as null and void, but for declaration of title and injunction – Article 100 is not attracted: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Article 109 – Provisions applicability – Limitation – The case is filed for setting aside the alienation, admittedly done by the father of the plaintiff – The time from which period of limitation commence is the date of alienation and the total period prescribed is 12 years – Therefore, as suit is filed within 12 years of the date of alienation by late Narayansingh – The suit on the basis of averment made in the plaint appears to have been filed within limitation: *Reva Associates (M/s.) Vs. Sarju Bai, I.L.R. (2016) M.P. 3367*

– Article 113 – Suit for Injunction – Adverse Possession – Held – Plaintiffs/ respondents are in possession since 1950 and it is pleaded that on 16.07.77, appellants interfered with their possession, thus suit was filed – As per Article 113, suit for perpetual injunction filed on 20.07.77, is within limitation, i.e. within 3 years – Further, plaintiffs completed adverse possession for more than 12 years before filing the suit and thus entitled to get relief of perpetual injunction to protect their possession – Judgment and decree of Courts below to the extent of perpetual injunction are confirmed: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Article 114 & Section 5 – Condonation of delay – It is not mandatory that such an application should be filed along with memo of appeal itself – Even if the application for condonation of delay is filed subsequent to filing of appeal, such an application cannot be rejected only on the ground that it was not filed along with the appeal: *Ashwini Pandya Vs. State of M.P., I.L.R. (2016) M.P. 2089*

– Article 136 – Limitation – Trial Court rightly reckoning the period of limitation from date of dismissal of miscellaneous appeal by High Court i.e. from 01.03.1995 – Since application for restitution of possession was filed on 01.05.1997 i.e. after two years, it is well within limitation as the limitation prescribed under Article 136 of Limitation Act, 1963 is twelve years: *Mana @ Ashok Vs. Budabai, I.L.R. (2018) M.P. 598*

– Article 137 – Period of Limitation – Practice – Held – As per Article 137, any other application for which no period of limitation is provided, limitation period would be three years when the right to apply accrues – Application u/S 12 of the Act of 2005 filed within one year and is thus not barred by Limitation: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

– Article 137 – See – Arbitration and Conciliation Act, 1996, Section 11(6): *Shridhar Dubey Vs. Union of India, I.L.R. (2017) M.P. 401*

– Article 137 & Section 15(2) – See – Arbitration and Conciliation Act, 1996, Section 11(6): *Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s.) Vs. Northern Coal Field Ltd., I.L.R. (2018) M.P. 794*

– Schedule I, Article 54 - "Date fixed for performance" is a crystallized notion – Means a definite date is fixed for doing particular act – Term "Date" is definitely suggestive of specified date in the calendar: *Madina Begum Vs. Shiv Murti Prasad Pandey, I.L.R. (2017) M.P. 507 (SC)*

– Schedule I, Article 54 and Specific Relief Act (47 of 1963), Section 22 – Suit for specific performance – If barred – 'A' agreed to sale property to 'B' by agreement dated 03.09.2001 agreeing to execute registered conveyance within 6 months of agreement – Court issued injunction on alienation – Injunction became ineffective on 28.09.2006 – On 02.08.2008 name of 'C' mutated upon sale – 'B' issued notice in August, 2008 for specific performance of the contract – Held – Suit is within limitation – In agreement, no specified date for performance of agreement is mentioned: *Madina Begum Vs. Shiv Murti Prasad Pandey, I.L.R. (2017) M.P. 507 (SC)*

LOK NAYAK JAI PRAKASH NARAYAN (MISA/DIR RAJNAITIK YA SAMAJIK KARNO SE NIRUDH VYAKTI) SAMMAN NIDHI NIYAM, 2008

– Rules 4, 4.1, 4.2 & 6 – See – Loktantra Senani Samman Adhiniyam, M.P., 2018, Section 9(1): *Gyan Singh Vs. State of M.P., I.L.R. (2020) M.P. 1287*

LOK PARISAR (BEDAKHALI) ADHINIYAM, M.P. (46 OF 1974)

– Sections 3, 4, 5, 7 & 17 – Allotment of land & Lease Deed – Cancellation of – Competent Authority – As per State Government notifications, all Rent Controlling Authorities in township of Indore have also been delegated with powers to function as competent authority under Adhiniyam of 1974 over the area in which they are exercising jurisdiction – Impugned order passed by competent authority – Further, competent authority not empowered to decide the correctness of lease cancellation order acting like a Civil Court – Order of eviction rightly passed under Adhiniyam of 1974 – Petition dismissed: *Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority, I.L.R. (2019) M.P. *11 (DB)*

– Sections 3, 4, 5, 7 & 17 – Allotment of land & Lease Deed – Cancellation of – Grounds – Plot which was earmarked for hospital, allotted to petitioner through NIT – Petitioner instead of constructing a hospital, started shopping/ commercial complex – Flagrant breach of mandatory conditions of lease deed resulting into cancellation of allotment order and lease deed – Petitioner has not challenged the lease cancellation order before appropriate forum as per liberty granted by this Court earlier – No case in favour of petitioner – Respondent entitled to take possession of premises – Petitions dismissed: *Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority, I.L.R. (2019) M.P. *11 (DB)*

LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN JATIYON AUR ANYA PICHHADE VARGON KE LIYE ARAKSHAN) ADHINIYAM, M.P. (21 OF 1994)

– Section 4(2) – Held – Section 4(2) relates to vertical reservations and not to horizontal compartmentalised reservations: *State of M.P. Vs. Uday Sisode, I.L.R. (2019) M.P. 2022 (DB)*

– Section 4(4) Proviso – Migration – Held – In view of the proviso to Section 4(4) of the Act, migration of reserved category candidate on basis of merit for allotment of seat of General category is applicable/permissible to vertical reservation: *Pinki Asati Vs. State of M.P., I.L.R. (2020) M.P. 1299 (DB)*

LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN JATIYON AUR ANYA PICHHADE VARGON KE LIYE ARAKSHAN) RULES, M.P., 1998

– Rule 4-B and Constitution – Article 14 & 16 – Special ST Category – Direct Recruitment – Validity – Held – Action of State calling 38 Special ST Category candidates for document verification as a mode of direct recruitment, without there being any proposal of the government for appointing such candidates on executive post of "Samagra Samajik Suraksha Vistar Adhikari" is bad in law and is prejudicial to rights of petitioners (candidates of select list) under Article 14 and 16 of Constitution – Post of "Vistar Adhikari" is an executive post and reservations available for special ST Category candidates under Rule 4-B is not applicable to such executive post – Further, after declaration of results, state government reduced the posts of ST category candidate without even taking out any corrigendum – Respondents directed to appoint petitioners on the said post – Petition allowed: *Ankit Baghel Vs. State of M.P., I.L.R. (2019) M.P. 390*

LOKAYUKT EVAM UP-LOKAYUKT ADHINIYAM, M.P. (37 OF 1981)

– Sections 10, 12 & 13 – Lokayukt Evam Up-Lokayukt (Investigation) Rules, M.P., 1982, Rules 6 & 16 – Complaint – Inquiry – Violation of principles of natural justice – After holding a preliminary enquiry a show cause notice was issued to the appellant – As per notice oral hearing was also given – Appellant gave his personal appearance before the Lokayukt – After considering reply of the said notice and giving a fair opportunity, fact finding report was submitted – Therefore, respondent has not violated the principles of natural justice while enquiring into the matter and submitting the fact finding report to the State Government for taking appropriate action against the appellant – Writ Appeal dismissed: *Guman Singh Damor Vs. State of M.P., I.L.R. (2017) M.P. *5 (DB)*

LOKAYUKT EVAM UP-LOKAYUKT (INVESTIGATION) RULES, M.P., 1982

– Rules 6 & 16 – See – Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Sections 10, 12 & 13: *Guman Singh Damor Vs. State of M.P., I.L.R. (2017) M.P. *5 (DB)*

LOKTANTRA SENANI SAMMAN ADHINIYAM, M.P. (30 OF 2018)

– Section 9(1) and Lok Nayak Jai Prakash Narayan (MISA/DIR Rajnaitik Ya Samajik Karno Se Nirudh Vyakti) Samman Nidhi Niyam, 2008, Rules 4, 4.1, 4.2 &

6 – Sanction of Honour Money – Withholding/Cancellation – Held – Order of sanction of honour money may be withheld or cancelled u/S 9(1) – It cannot be said that order/ executive instruction withholding the honour money de hors the statutory provisions of law or it amounts to amending or superseding, supplementing any statutory provisions – If respondents decided to restore honour money only after physical verification of each and every beneficiary, same cannot be held to be arbitrary or bad in law – Further, prima facie, petitioner failed to produce adequate documents to establish his entitlement – Orders were well within jurisdiction – Petition dismissed: *Gyan Singh Vs. State of M.P., I.L.R. (2020) M.P. 1287*

– Section 9(1) & 9(2) – "Suo Motu" Exercise of Powers – Held – Section 9(2) provides that powers u/S 9(1) can be exercised not only on any relevant complaint or representation but can also be exercised "suo motu": *Gyan Singh Vs. State of M.P., I.L.R. (2020) M.P. 1287*

– Section 9(3) – Refund of Honour Money – Held – If after verification, it is found that petitioner has wrongly received honour money, then in view of Section 9(3) of the Adhiniyam, he shall be liable to refund the same: *Gyan Singh Vs. State of M.P., I.L.R. (2020) M.P. 1287*

LOWER JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 1994

– Rules 7, 9 & 10 and Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 6 – Appointment – Civil Judge – Eligibility – Good Character – Petitioner successfully cleared/passed the preliminary examination, main examination and the interview and his name was recommended for appointment as Civil Judge – Subsequently, on the information of petitioner involvement in the criminal cases, his name was removed by the State Government from the selection list holding him not eligible – Petitioner filed a writ petition which was further referred to the larger bench – Held – Acquittal in a criminal case is not a certificate of good conduct of a candidate nor is sufficient to infer that candidate possess good character – Decision of acquittal passed by a criminal Court on the basis of compromise would not make the candidate eligible for appointment as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post – Test for each of them is based on different parameters – Competent authority has to take a decision in respect of suitability of candidate discharge the functions of a civil post – Supreme Court held that even if a candidate has made a disclosure of the concluded trial but still the employer has a right to consider the antecedents and cannot be compelled to appoint a candidate – Decision of the State Government that petitioner is not eligible for appointment, cannot

be said to be illegal or without jurisdiction – Questions of Law referred to Larger Bench answered accordingly: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627 (FB)*

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M.P. ELECTRICITY REGULATORY COMMISSION (CO-GENERATION AND GENERATION OF ELECTRICITY FROM RENEWABLE SOURCES OF ENERGY) REGULATIONS, 2008

– Regulation 1.40 & 1.41 and Incentive Policy for Development of Small Hydro Power Projects in Madhya Pradesh, 2006, Clause 9 – Exclusive Jurisdiction – Held – As per clause 9 of the policy of 2006, MPERC is having exclusive jurisdiction to decide the dispute – Further held – Clause 1.40 and 1.41 provides power to MPERC to amend any provision of regulations and remove the defects, if any – Petitioners having alternate and efficacious remedy available – Petition dismissed: *Ascent Hydro Projects Ltd. (M/s.) Vs. M.P. Electricity Regulatory Commission, I.L.R. (2018) M.P. 1415*

M.P. ELECTRICITY REGULATORY COMMISSION (CO-GENERATION AND GENERATION OF ELECTRICITY FROM RENEWABLE SOURCES OF ENERGY) REGULATIONS, 2010

– Regulation 12.2 and Electricity Act (36 of 2003), Section 86(1)(f) – Amendment – Jurisdiction of Court – Notification regarding amendment – Demand of additional charges – Challenge to – Held – Petitioner no.1 and 2 are having their registered office at Mumbai and Generation unit at Umaria, therefore to challenge the said notification and demand of additional charges, they ought to have file petition before Principal Bench at Jabalpur – Further held – Petitioner no. 1 and 2 are having remedy to approach the Commission (MPERC) under Section 86(1)(f) of the Act of 2003 to challenge the applicability of amended regulation: *Ascent Hydro Projects Ltd. (M/s.) Vs. M.P. Electricity Regulatory Commission, I.L.R. (2018) M.P. 1415*

M.P. GOVERNMENT AUTONOMOUS MEDICAL AND DENTAL POST GRADUATE COURSE (DEGREE/ DIPLOMA) ADMISSION RULES, 2017

– Rule 2(vii) – See – Post Graduate Medical Education Regulations, 2000,

Regulations 9(iv) & 9(vii): *Brijesh Yadav (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *124 (DB)*

M.P. GOVERNMENT BUSINESS (ALLOCATION) RULES

– See – Constitution – Article 166(i), 166(2), 166(3) & 226: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

MADHYA BHARAT LAND REVENUE AND TENANCY ACT (66 OF 1950)

– Section 52 and Madhya Bharat Zamindari Abolition Act (13 of 1951), Section 4(1) – Statutory Presumption – Held – There is a presumption of correctness of Kharsa entries u/S 52 of the Act of 1950 – Tenancy can only be proved by khasra entries, which shows that the said land not recorded as Khud-Kasht land and there was no personal cultivation – Further, entry of "Jwar" cultivation was ex-facie spurious, manipulated and illegally made – No presumption can be drawn in favour of respondent/ plaintiff: *State of M.P. Vs. Sabal Singh (Dead) By LRs., I.L.R. (2020) M.P. 751 (SC)*

MADHYA BHARAT ZAMINDARI ABOLITION ACT (13 OF 1951)

– Sections 2(c), 4 & 37 – See – Land Revenue Code, M.P., 1959, Sections 158, 185, 189 & 190: *State of M.P. Vs. Sabal Singh (Dead) By LRs., I.L.R. (2020) M.P. 751 (SC)*

– Section 4/37-38 – Vesting of land in State – Held – Beed land got vested in the State automatically – Onus is on the plaintiff to prove that the land in question was not a Beed land, but Khud-kasht land which was recorded as Beed land – It is also not the case that Khud-kasht land has been given on lease – Thus the ratio of Devi Singh, Gorabai and Gordhandas case is not applicable in present case: *Gajraj Singh Vs. State of M.P., I.L.R. (2017) M.P. 889*

– Section 4(1) – See – Madhya Bharat Land Revenue and Tenancy Act, 1950, Section 52: *State of M.P. Vs. Sabal Singh (Dead) By LRs., I.L.R. (2020) M.P. 751 (SC)*

– Section 4(1)(a) & 4(2) – "Khud-Kasht" Lands – Held – In order to save land from vesting, Section 4(2) requires land to be personally cultivated by Zamindar or through employees or hired labourers and it should be recorded in revenue papers as "Khud-Kasht" otherwise all land vest in State as provided u/S 4(1)(a): *Chattar Singh Vs. Madho Singh, I.L.R. (2019) M.P. 1171 (SC)*

– Section 4(1)(a) & 5(f) – "Charnoi Lands" – Ownership – Held – Once land is recorded as "Charnoi" i.e. common land reserved for grazing of cattle of villagers, such common land clearly vests in State as provided u/S 4(1)(a) whereunder all land, forest, trees, village-sites, pathways etc vests in State absolutely free from all encumbrances – Section 5(f) did not confer any rights on Zamindars on such common land and did not save same from vesting, once it was recorded as Charnoi for public purpose before date of vesting in 1950-51 – Appeal dismissed: *Chattar Singh Vs. Madho Singh, I.L.R. (2019) M.P. 1171 (SC)*

– Section 4(1)(a) & 5(f) – Grove Lands – Held – Trees standing on side of road would not fulfill requirement of a 'Grove' – When land is primarily used for 'Charnoi', it would not fall into the category of 'Grove' and Section 5(f) would not save such trees from vesting – The fruit bearing trees irrespective of numbers have also vested in State u/S 4(1)(a): *Chattar Singh Vs. Madho Singh, I.L.R. (2019) M.P. 1171 (SC)*

MADHYA PRADESH REORGANISATION ACT (28 OF 2000)

– Section 78 – Object & Purpose – Held – Object and purpose of deeming provision envisaged in Section 78 is limited and restricted to enforcement of enactment/ law as they existed in the unified State of M.P. to the new State of Chhattisgarh, and nothing more and beyond: *State of M.P. Vs. Lafarge Dealers Association, I.L.R. (2019) M.P. 2403 (SC)*

– Sections 78, 79, 84 & 85 – Bifurcation of State – Sales Tax – Exemption/ Benefit of Deferment – Held – Law enacted by State of M.P. before reorganisation would continue to apply to areas forming part of new State of Chhattisgarh and also to reorganized State of M.P., but within their territorial confines – Any trade between both the states would be inter-state trade and not intra-state trade – Appeal by States are allowed: *State of M.P. Vs. Lafarge Dealers Association, I.L.R. (2019) M.P. 2403 (SC)*

– Sections 78, 84 & 85 and Constitution – Article 286 – Deeming Fiction – Held – Deeming fiction and provisions of the Act of 2000 nowhere postulates that trade between two states would continue to remain intra-state trade and not inter-state trade – Any deeming fiction to said effect would be contrary to Article 286 of the Constitution: *State of M.P. Vs. Lafarge Dealers Association, I.L.R. (2019) M.P. 2403 (SC)*

MADHYA PRADESH STATE EMPLOYMENT GUARANTEE SCHEME

– Clause 16(1) – Contractual Appointment – Termination – Criminal Case – Opportunity of Hearing – Held – Petitioner categorically admitted that offence has

been registered against him – As per guidelines, if termination is based on registration of criminal offence, then it is not mandatory to provide an opportunity of hearing to employee – Not providing an opportunity of hearing would not cause any prejudice to him – Petition dismissed: *Brijesh Kumar Patel Vs. State of M.P., I.L.R. (2019) M.P. 2529*

MADHYANCHAL GRAMIN BANK (OFFICERS AND EMPLOYEES) SERVICE REGULATION, 2010

– Amendment 2013 – Regulation 72 & Clause 2(i)(m)(o) – Calculation of Gratuity – Inclusion of Dearness Allowance – Held – Definition of 'pay' refers about emoluments whereas 'emolument' includes salary which includes basic pay and dearness allowance, thus dearness allowance is specifically classified and must form part of 'pay' because the definitions are closely interwoven – For determining "last pay drawn" for purpose of calculation of gratuity under Regulation, dearness allowance is to be taken into account – Petitions allowed: *All India Gramin Bank Pensioners Organization Unit Rewa Vs. Madhyanchal Gramin Bank, I.L.R. (2018) M.P. 2820*

MADHYASTHAM ADHIKARAN ADHINIYAM, M.P. (29 OF 1983)

– Aims and Object – Held – Object of legislation is to provide speedy dispute resolution mechanism – State must monitor timeliness so that arbitration proceedings do not take unduly long time – One to two years may be taken as reasonable time for the purpose – Chairman of Tribunal must also ensure that no unreasonable delay takes place: *Essel Infra Projects Ltd. (M/s.) through its Authorized Representative Vs. State of M.P. Acting through its Director, I.L.R. (2018) M.P. 2787 (SC)*

– Revenue Recovery Certificate – Challenge to – Maintainability – Held – Challenge to revenue recovery certificate under the guise of challenge to only termination of contract is not tenable because the consequential relief is to that of challenge to revenue recovery certificate: *Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346 (FB)*

– Revision Proceedings – Held – Decision at the original level is not enough if proceedings are thereafter held up in revision proceedings before High Court – Revision petition may be disposed of expeditiously but not beyond two years – Though, timeliness are not mandatory, same must be kept in mind by all concerned: *Essel Infra Projects Ltd. (M/s.) through its Authorized Representative Vs. State of M.P. Acting through its Director, I.L.R. (2018) M.P. 2787 (SC)*

– Section 2(d) – Dispute – "Ascertained Money" – Held – Expression "ascertained money" as used in Section 2(d) of the Act of 1983 will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of Claims/Counter-claims of parties: *Gangotri Enterprises Ltd. (M/s.) Vs. M.P. Road Development Corporation, I.L.R. (2018) M.P. 2091 (SC)*

– Section 2(d) & 7-B(1)(b), Proviso and Limitation Act (36 of 1963), Section 9 – Arbitral Tribunal – Reference – Limitation – Applicability – Held – As concluded by Apex Court, proceedings before Arbitral Tribunal are proceedings before the Court – Further held – Once time has begun nothing stops it, said principle is not only a principle in terms of Section 9 of the Act of 1963 but is also applicable to proceedings under the Act of 1983 – If aggrieved person has not availed the remedy within period of limitation, his right to sue stands extinguished and such right does not revive on account of decision of the final authority after six months – Proviso to Section 7-B(1)(b) would be applicable even if final authority has not given any decision within six months: *Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2018) M.P. 2668 (FB)*

– Section 2(1)(d) – "Ascertained Amount" and "Consequential Relief" – Held – The expression "ascertained amount" appearing in Section 2(1)(d) of the Act of 1983 includes the amount of consequential relief – Further held – Consequential relief, if not claimed with reference cannot be claimed subsequently: *Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346 (FB)*

– Sections 2(1)(d), 7-A (1) & (2) and Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – Jurisdiction and Maintainability – Consequential Relief and Ascertainment Amount – Termination of Contract – Application for appointment of Arbitrator u/S 11(6) of the Act of 1996 – Held – As per Section 7-A(2) of the State Act of 1983, if the aggrieved person omits to claim a relief though available on the date of seeking reference, he is debarred from claiming such relief in a subsequent proceedings – In a reference, if consequential relief is not claimed, the reference itself is not maintainable and liable to be declined – Mere astuteness in drafting of a plaint/reference seeking simpliciter termination of contract without seeking consequential relief (ascertainable), would not be maintainable – Further held – Jurisdiction of the State Arbitral Tribunal cannot be ousted for the reason that party is claiming only declaration and not consequential relief as without the consequential relief, declaration is meaningless: *Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD, I.L.R. (2018) M.P. 1346 (FB)*

– Section 2 (1)(i) – Agreement for execution of works contract – Applicant having remedy to approach Arbitration Tribunal under section 7(1) of the Madhyastham Act – Application under section 11(6) of the Arbitration and Conciliation Act, 1996 not maintainable – Application rejected: *Indian Construction Co. (Guj.) Ltd. Vs. Indore Municipal Corporation, I.L.R. (2017) M.P. 2533*

– Section 2(1)(g) – Chapter 36 – Public Undertaking – Any Government Company including a Corporation & Statutory authority satisfying the conditions of definition is a public undertaking – Municipal Corporation is substantially controlled by the State Government therefore it is a public undertaking – No separate notification for public undertaking required: *Indian Construction Co. (Guj.) Ltd. Vs. Indore Municipal Corporation, I.L.R. (2017) M.P. 2533*

– Section 4(3)(iii) – Member of Tribunal/Arbitrator – Held – Apex Court has already concluded that an employee of a party to dispute cannot be an arbitrator – In present case, it is directed that State of M.P. will not appoint as member of Tribunal, its employees of the concerned department to which the dispute relates – Appeal disposed: *Gangotri Enterprises Ltd. (M/s.) Vs. M.P. Road Development Corporation, I.L.R. (2018) M.P. 2091 (SC)*

– Section 7 and Arbitration and Conciliation Act (26 of 1996), Section 34 – Works contract – State Govt. one of the party – Jurisdiction over the subject matter – Held – In case of work contract the tribunal constituted under the Act of 1983 will have exclusive jurisdiction excluding the jurisdiction of forum under the Act of 1996 Act: *State of M.P. Vs. M/s. Lion Engineering Consultants, I.L.R. (2016) M.P. 735*

– Sections 7-A, 7-B & 17-A and Civil Procedure Code (5 of 1908), Section 141 – Reference Petition – Amendment – Enhancement of Claim – Inherent Powers of Tribunal – Held – Clerical or arithmetical mistakes which may arise in a petition can be permitted to be corrected u/S 17-A of the Act – A claim which was not included in reference petition on date of filing of petition cannot be included by virtue of amendment – Tribunal does not possess any inherent powers to allow amendment in the claim petition which is not permissible in terms of Section 7-A and 7-B of the Act of 1983 – Impugned order set aside – Petition allowed: *State of M.P. Vs. M/s. Vigyashree Infrastructure Ltd., I.L.R. (2018) M.P. *111 (DB)*

– Section 7-B – Appeal & Reference – Limitation – Computation – Held – Under clause 29 of agreement which is an arbitration clause, Superintending Engineer is not rendered functus officio merely because a dispute is not decided within 60 days, a decision even after 60 days is a decision under said clause and is appealable thereunder – Reference filed in terms of Section 7-B read with appended proviso within stipulated time is maintainable – Revision allowed: *Viva Construction Co. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2774 (DB)*

– Section 7-B – Term "Decision" – Held – An indecisiveness or an indecision on the part of Superintending Engineer can never be construed to be a "decision" giving rise to avail remedy of appeal, because unless the forum of final authority is exhausted, aggrieved person cannot avail the remedy u/S 7-B of the Adhiniyam of 1983: *Viva Construction Co. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2774 (DB)*

– Sections 7-B & 19 – Revision against dismissal of reference on the sole ground of limitation – Held – Period of limitation shall commence on expiry of 6 months from the date of reference of dispute to the final authority – Reference of quantified claim dated 23.11.2009 was beyond the period of one year – If cause of action considered from 23.05.2011, the date on which single member of Dispute Board expressed his inability to decide the question of service tax, reference filed on 11.07.2013, not within one year – No infirmity in order – Petition dismissed: *IVRCL Ltd. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. 1483 (DB)*

– Section 7-B(1)(b) – Limitation – Cause of action for filing claim accrued on 17.02.2004 and claim preferred before the final authority on 10.11.2006, whereby the same was rejected on 14.12.2006 – Reference petition filed before Tribunal on 10.12.2007, i.e within one year as stipulated in Section 7-B(1)(b) – Reference petition was within limitation: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Section 7-B(1)(b) – Limitation – Provisions of Statute and Agreement – Applicability – Held – Although agreement clause provides limitation of 28 days for referring a dispute to Tribunal but statutory limitation provided under the statute of 1983 will have overriding effect over provisions of agreement: *State of M.P. Vs. M/s. SEW Construction Ltd., I.L.R. (2019) M.P. 1552 (DB)*

– Section 7-B(1)(b), Proviso and Limitation Act (36 of 1963), Section 9 – Reference – Limitation – Held – In terms of Section 7-B(1)(b), reference is required to be made within one year from date of communication of decision of final authority – Proviso gives six months to final authority to take decision – If final authority fails to take a decision within six months, it amounts to deemed rejection of reference and confers cause of action to aggrieved person to seek reference from Arbitral Tribunal: *Telecommunications Consultants India Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2018) M.P. 2668 (FB)*

– Section 12 and Civil Procedure Code (5 of 1908), Section 141 – Applicability of C.P.C. – Held – Section 141 of the Code would be applicable to proceedings in any Court of civil jurisdiction and Tribunal is not a Court of civil jurisdiction, thus procedure contained in code cannot be extended to the Tribunal relying upon Section 141 of the Code – Provisions of Code are only applicable in terms of Section 12 of the Act,

other provisions of the Code stands excluded: *State of M.P. Vs. M/s. Vigyashree Infrastructure Ltd., I.L.R. (2018) M.P. *111 (DB)*

MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT (56 OF 2007)

– Section 24 – Abandonment of Senior Citizen – Victim who is alleged to have been abandoned is aged about 50 years – Section 2(h) – Meaning – Any person being a citizen of India, who has attained the age of sixty years or above – As the victim is aged about 50 years therefore, charge framed against applicants is not sustainable in eyes of law – Applicants are entitled to be discharged – Revision allowed: *Nafees Vs. State of M.P., I.L.R. (2016) M.P. 2092*

MAXIM

– "Actus Curiae Neminem Gravabit" – and Civil Procedure Code (5 of 1908) – Section 152 – Held – The basis of provision u/S 152 CPC is found on the maxim actus curiae neminem gravabit i.e. an act of court shall prejudice no man – Thus, an unintentional mistake of Court which may cause prejudice to any party must be rectified: *Khursheed Bai Vs. State of M.P., I.L.R. (2019) M.P. 1159*

– "Audi alteram partem" – Held – Impugned order is an exception to the rule of "audi alteram partem" as no notice or opportunity of hearing was granted to petitioner while passing the order: *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– "Falsus in uno falsus in omnibus" – Applicability – Held – In the present case, principle of "falsus in uno falsus in omnibus" has no application – Court must try to separate the grain from the chaff: *Sardar Singh Vs. State of M.P., I.L.R. (2018) M.P. 2270*

– "Falsus in Uno, falsus in Omnibus" – Applicability – Held – In India, the maxim "falsus in uno, falsus in omnibus" is not applicable in criminal trial – Evidence of such witnesses which is partly unreliable cannot be discarded wholly: *Chauda Vs. State of M.P., I.L.R. (2019) M.P. 471 (DB)*

– "Furiosi nulla valuntus est" means a person who is suffering from mental disorder cannot be said to have committed a crime as he does not know what he is doing: *Ramnath Pav Vs. State of M.P., I.L.R. (2018) M.P. 943 (DB)*

– "Generalia Specialibus Non Derogant" – Special law overrides general law – Jurisdiction over the Courts to deal with the matter and pass orders under Cr.P.C. should be presumed and to hold contrary, there must be specific bar in any special law: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– "Nemo moriturus praesumitur mentire" i.e. a man will not meet his Maker with a lie in his mouth – The principle on which dying declarations are admitted in evidence: *State of M.P. Vs. Komal Prasad Vishwakarma, I.L.R. (2016) M.P. 3199 (DB)*

– "Nova constitution futuris forman imponere debet non praeteritis" – It means "a new law ought to regulate what is to follow, not the past": *Vijay Luniya Vs. State of M.P., I.L.R. (2018) M.P. 2107 (DB)*

– "Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest" – When the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable: *Akhilesh Kumar Jha Vs. State of M.P., I.L.R. (2016) M.P. 1589*

– "Volenti non-fit injuria" – Applicability – Held – This principle applies in a matter involving tortuous liability and not criminal liability: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

MEDICAL COUNCIL ACT (102 OF 1956)

– New Medical College – Central Government is the final authority and the Medical Council of India is only a recommending Authority: *Gyanjeet Sewa Mission Trust Vs. Union of India, I.L.R. (2016) M.P. 1102 (DB)*

– Section 10-A – Disapproving the scheme for establishment of a new Medical College – Application for the permission was made by the petitioner to the Central Government on 26.08.2014 – Medical Council of India communicated its negative recommendation dated 24.08.2015 – No notice issued to petitioner in compliance of statutory requirement in Section 10-A(3) & (4) – Order passed by the Central Government dated 11.09.2015 is set aside – Central Government is directed to decide proposal afresh by giving opportunity of hearing to petitioner: *Gyanjeet Sewa Mission Trust Vs. Union of India, I.L.R. (2016) M.P. 1102 (DB)*

– and Medical Council of Indian Establishment of Medical College Regulation, 1999 – Regulation 3 – Essentiality Certificate – Cancellation/ Withdrawal – Grounds – Held – Assessment report of MCI and inspection report of Committee shows that appellant college failed to fulfill minimum standards of infrastructure/Staff as per norms of MCI despite repeated opportunities given – Not even first batch could persue or complete medical course in college for 3 successive academic session – Even after lapse of about 5 years appellant failed/ neglected to discharge its commitment given to State – It is a case of constructive fraud – Substratum on basis of which Essentiality Certificate was issued, totally disappeared – Essentiality Certificate rightly withdrawn – Appeal dismissed: *Sukh Sagar Medical College & Hospital Vs. State of M.P., I.L.R. (2020) M.P. 1969 (SC)*

MEDICAL COUNCIL OF INDIAN ESTABLISHMENT OF MEDICAL COLLEGE REGULATION, 1999

– Regulation 3 – Essentiality Certificate – Cancellation – Held – This Court has earlier concluded that State Government can cancel/revoke/ withdraw Essentiality Certificate in exceptional cases where if it is obtained by fraud or any circumstances where the very substratum on which essentiality certificate was granted, disappears or such like ground where no enquiry is called for on part of State Government: *Sukh Sagar Medical College & Hospital Vs. State of M.P., I.L.R. (2020) M.P. 1969 (SC)*

– Regulation 3 – See – General Clauses Act, 1897, Section 21: *Sukh Sagar Medical College & Hospital Vs. State of M.P., I.L.R. (2020) M.P. 1969 (SC)*

MEDICAL EDUCATION (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 1987

– Rule 4 & 13 and Swashasi Chikitsa Mahavidhyalayein Shekshanik Adarsh Seva Niyam, M.P., 2018, Rules 5.1 – Period of Deputation – Curtailment – Held – Order of appointment issued by the autonomous medical college cannot be treated as an order of State Government – Petitioner was on deputation in capacity of a Professor – It cannot be said that State Government has curtailed the period of deputation: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

– Rule 4 & 13 and Swashasi Chikitsa Mahavidhyalayein Shekshanik Adarsh Seva Niyam, M.P., 2018, Rules 5.1 & 7(6) – Cadre – Held – After Medical Colleges were made autonomous, petitioner opted for State Cadre – He cannot shift to employment of Society by seeking appointment to the post of CEO-sum-Dean of autonomous medical College – No infirmity in impugned order: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

– Rule 4 & 13 and Swashasi Chikitsa Mahavidhyalayein Shekshanik Adarsh Seva Niyam, M.P., 2018, Rules 5.1, 7(6) & 9 – Deputation & Promotion – Held – Petitioner, holding post of professor, is a State Government employee and has neither disowned his lien on the said post nor has he resigned – Without seeking NOC from State, he accepted new appointment in a autonomous medical college – Such appointment on post of CEO-cum-Dean would not create any right for petitioner to claim himself to be equivalent to post of Dean – Substantive post of petitioner is Professor and State Government can send him on deputation on the said post – Further, petitioner is governed by Rules of 1987 where post of Dean can only be filled by promotion and not by direct recruitment – Petition dismissed: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

MEDICAL JURISPRUDENCE

– MLC Report – Contents – Doctor in her evidence stated that deceased while narrating the incident to her stated that she herself poured kerosene on and set herself ablaze due to anger – Trial Court held that the Doctor has not recorded such version of deceased in her MLC Report and therefore statement of doctor cannot be believed – Held – In MLC Report, the doctor is not statutorily or otherwise obliged to record such factual version of the deceased – "Modi's" Medical Jurisprudence and Toxicology and "Lyon's" Medical Jurisprudence and Toxicology referred – Mere because doctor has not recorded the stand of the deceased in her MLC report, her deposition cannot be disbelieved: *Sanju Vs. State of M.P., I.L.R. (2018) M.P. 953 (DB)*

– Possibility of injury on penis in case of rape – Held – Depends upon various factors – If a penis is inserted in vagina having small aperture skin covering glans penis may be injured – If penetration is done without any injury, there is no possibility of getting any further injury: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Rigor Mortis – Held – Incident took place at 1:00 pm and as per the FIR, postmortem was conducted about 3 hrs 15 minutes after the incident – In India, rigor mortis sets after 3-6 hours – In the present case, there was no rigor mortis in the body of deceased, there appears to be no reason to doubt the time of incident: *Bhanwarlal Vs. State of M.P., I.L.R. (2017) M.P. 2495 (DB)*

MEDICAL TERMINATION OF PREGNANCY ACT (34 OF 1971)

– Section 3 & 5 – Rape Victim – Termination of Pregnancy – Pregnancy of 16 weeks – Father of a rape victim seeking direction for termination of pregnancy – Held – In the present facts, pregnancy can be terminated if conditions mentions in Section 3 and 5 of the Act of 1971 are satisfied and fulfilled – Victim of rape cannot be compelled to give birth to a child of the rapist – Victim/guardian has a valuable right to take a decision regarding termination of pregnancy and such right is flowing from article 21 of the Constitution – In the present case, victim was not subjected to medical examination by two or more registered medical practitioners which is a statutory requirement as per Section 3(2)(b) of the Act – Considering the seriousness and urgency of the matter, directions issued to respondents to constitute a committee with this regard, of three registered medical practitioners within 24 hours from the date of receipt of this order – Petition disposed of: *Sundarlal Vs. State of M.P., I.L.R. (2018) M.P. 86*

– Section 3 & 5 and Constitution – Article 21 – Permissibility – Held – As per Section 3(2), pregnancy may be terminated when length of pregnancy do not exceed 20 weeks whereas in instant case, fetus of a 13 years old rape victim is of 26 weeks (more than 7 months) – Further, Medical Board opined to continue pregnancy as there was no danger to life of victim or fetus – Psychiatrist also opined that victim is not suffering from any mental disease – Matter outside the scope of Section 5(1) of the Act – Termination cannot be directed – Petition dismissed: *Raisa Bi Vs. State of M.P., I.L.R. (2019) M.P. 1415*

– Section 3(4)(a) & 5(1) – Consent of victim/pregnant woman – Section 3(4)(a) and Section 5(1) of the Act creates exceptions to the rule of pregnant woman's consent, when pregnant woman is below 18 years – In the present case, victim is a minor and therefore if petitioner/father gives consent for termination of pregnancy, there shall be no need to obtain the willingness of victim: *Sundarlal Vs. State of M.P., I.L.R. (2018) M.P. 86*

MEDICO LEGAL INSTITUTE (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 1987

– Rule 4(1) – Regularization of Service – Private respondent not entitled for regularization from the date of initial appointment, because not appointed against substantive post and was not kept on probation in terms of the Service Rules: *Geeta Rani Gupta (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 2148 (FB)*

MENTAL HEALTH ACT (14 OF 1987)

– Sections 50, 51 & 76 – Inquisition – Suit for ejectment and mesne profit against Mohd. Yunus Munshi and Mohd. Kamar Hussain – An application u/S 50 of the Act of 1987 was filed by Mohd. Kamar Hussain seeking declaration that Mohd. Yunus Munshi is mentally ill person and is unable to manage his property – Trial Court held that Mohd. Yunus Munshi is mentally ill person but dismissed the application on the ground that details of properties had not been disclosed – Review application filed by applicant which was also dismissed – Challenge to – Held – Only one application is required to be made u/S 50 of the Act, where District Judge is required to conduct inquisition and give a declaration u/S 51 of the Act – In the present case, trial Court wrongly dismissed the application on technical ground and without giving any declaration – Application filed by appellant was maintainable u/S 50 and Section 51 of the Act – Impugned order set aside – Matter remitted back to District Court – Appeal allowed: *Mohd. Yunus Munshi Vs. Public in General, I.L.R. (2017) M.P. 2434*

– Sections 52, 53 & 54 – Procedure for appointment of Guardian/Manager – Section 51 mandates that District Court shall record its findings regarding mental

illness of the person and if person is declared mentally ill, another inquiry is to be conducted u/S 52 of the Act for whether such person is capable of taking care of himself and managing his property – If he is incapable of taking care of himself, then guardian will be appointed and if he is incapable to manage his properties, a manager will be appointed u/S 54 of the Act – In the present case, if appellant wants declaration that said person is incapable of managing his property, District Court ought to have directed him to give a declaration about details of his properties instead of rejecting the application – Further held – Entire enquiry can be conducted in one application u/S 50 of the Act, no separate application is required to be filed: *Mohd. Yunus Munshi Vs. Public in General, I.L.R. (2017) M.P. 2434*

METALLIFEROUS MINES REGULATION, 1961

– Regulation No. 115(5) & 177(1) – See – Criminal Procedure Code, 1973, Section 221(2) & 300(1): *Jayant Laxmidas Vs. State of M.P., I.L.R. (2018) M.P. 248*

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL RULES, M.P., 2006

– Rule 5 – See – Micro, Small and Medium Enterprises Development Act, 2006, Section 18(1) & (2): *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. *37 (DB)*

– Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 36 – Validity and Choice of Remedies – Held – Providing of plural remedies is valid when two or more remedies are available to a person even if inconsistent – It is for the person to elect one of them – There is no question of repugnancy in providing such remedy: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

– Rule 5, Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 30 & 18 and Arbitration and Conciliation Act (26 of 1996), Section 34 & 36 – Recovery of Award Amount as Arrears of Land Revenue – Petition before High Court to declare Rule 5 of Rules of 2006 as Ultra Vires dismissed – Challenge to – Held – Once arbitral award is passed, it was expected to appellants to honour it after lapse of time u/S 34 of the Act of 1996 – Rule 5 intends to simplify the procedure of execution which is not discriminatory, harsh or drastic and prejudicial to appellants but is quite a reasonable procedure and being a remedial provision is ancillary – Rule 5 provides an additional speedier remedy to carry out the objective of Act of 2006 – Framing of such Rule by State Government does not reveal that authority has been exceeded or the scope of Act has been widened – Object of provision is to ensure recovery – Rule 5 has been rightly enacted to ensure that small, micro and medium

industries do not suffer – Rule 5 cannot be held to be ultra vires – Appeal dismissed: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT (27 OF 2006)

– Sections 15, 16, 17, 18 & 24 – See – Civil Procedure Code, 1908, Order 7 Rule 11: *C.M.D. (EZ) MPPKVVCL Vs. Sharad Oshwal, I.L.R. (2016) M.P. 1795*

– Section 18(1) & (2), Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 36 – Execution Proceedings – Ultra Vires provisions – In case of any dispute, Section 18 of the Act of 2006 contemplates the dispute resolution mechanism under which disputes would be adjudicated through Arbitration and further award would be executed as per the provision of Section 36 of the Arbitration and Conciliation Act, 1996, whereas Rule 5 of the Rules of 2006 provides for a special procedure of recovery as if it is an arrears of land revenue – Petitioner prayed to declare Rule 5 of the Rules of 2006 to be ultra vires to Section 18 of the Act of 2006 – Held – Merely because a separate Rule for recovery is contemplated under the Rules of 2006, in absence of there being any conflict with the constitution, the same cannot be declared as ultra vires – If two remedies happens to be inconsistent, they can still continue and it is for the person to chose amongst them and once he elects one of them, action can commence accordingly – Rule formulated in addition to the statutory rule for execution available u/S 36 of the Act of 1996, cannot be termed as ultra vires or illegal to the constitution or to the Act of 2006 – Petition dismissed: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. *37 (DB)*

– Section 18(4) – Jurisdiction – Held – Section 18(4) empowers the Council to act as an Arbitrator or Conciliator in dispute between a supplier located within its jurisdiction and a buyer located anywhere in India – The provision overrides applicability of any other law for the time being in force when an action is taken under 2006 Act – Council had jurisdiction to pass the Award: *Fives Stein India Project Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2020) M.P. 667 (DB)*

– Section 19 and Constitution – Article 226/227 – Alternate Remedy – Held – Against the award passed, petitioner has a remedy of Appeal u/S 19 of the Act of 2006 – When alternative efficacious remedy is available, writ petition under Article 226, not the appropriate remedy – Single Judge rightly denied indulgence – Appeal dismissed: *Fives Stein India Project Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2020) M.P. 667 (DB)*

– Section 30 & 18 – See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5: *Power Machines India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 2043 (SC)*

MINERAL CONCESSION RULES, 1960

– Rule 24A – Renewal of Mining Lease – Lease expired on 18.11.1998 – Application for renewal of lease moved on 13.11.1997 – Renewal application pending till 09.04.2007 – Petitioner continued to enjoy minerals over 9 years without compensating the revenue in form of fair royalty amount – Held – In all pending renewal applications authorities must act with utmost dispatch and if any official shows inertia in deciding such applications in a time bound manner then Secretary, Mines & Minerals Department must proceed against him by way of departmental action including recovery of loss caused to the public exchequer: *Pawan Kumar Ahluwalia Vs. Union of India, I.L.R. (2016) M.P. 1074 (DB)*

– Rule 24A – Renewal of Mining Lease – Rule 26(3) – Instead of notice for curing defects , notice issued u/s 12 – Effect – Held – No prejudice has been caused to the petitioner because of mis-description of the notice received by petitioner as the substance of the notice clearly disclosed the requirement of notice u/s 26(3): *Pawan Kumar Ahluwalia Vs. Union of India, I.L.R. (2016) M.P. 1074 (DB)*

– Rule 24A(1) – See – Mines & Minerals (Development & Regulation) Act, 1957 [Amendment Act (10 of 2015) w.e.f. 12.01.2015], Section 8A: *Pawan Kumar Ahluwalia Vs. Union of India, I.L.R. (2016) M.P. 1074 (DB)*

MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, M.P., 2006

– Rule 18 – See – Land Revenue Code, M.P., 1959, Section 247(7): *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 18(6) – See – Minor Mineral Rules, M.P. 1996, Rule 53: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

MINES ACT (35 OF 1952)

– Section 2(1)(j) – See – Electricity Duty Act, M.P., 1949, Section 3(1), Part B, Entry 3: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

– Section 2(1)(j) & 2(1)(jj) – Mines – Definition & Scope – Discussed & explained: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

– Section 2(1)(j) & 2(1)(jj) – Mining Activity – Held – If a person carrying on business of stone crushing, is purchasing mineral from other source and is not directly obtaining mineral through mining, digging and quarrying etc which is used in

stone crusher for converting into Gitti, then he cannot be said to be involved in mining activity: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

– Section 72C(1)(a) – See – Criminal Procedure Code, 1973, Section 221(2) & 300(1): *Jayant Laxmidas Vs. State of M.P., I.L.R. (2018) M.P. 248*

MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT (67 OF 1957)

– Section 21 – See – Criminal Procedure Code, 1973, Section 451 & 457: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Section 23(C), Land Revenue Code, M.P. (20 of 1959), Section 247(7), Minor Mineral Rules, M.P. 1996 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006 – Legislative Competence – Contradictions – Held – Rules of 1996 and 2006 are the Rules made by State Government in exercise of powers vested in State Government in terms of the Act of 1957 – Such Rules neither contradict Section 247(7) of Code of 1959 nor suffers from any other vice of illegality – Rules of 2006 are applicable to all minerals including minor minerals whereas Rules of 1996 are only in respect of minor minerals: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

MINES AND MINERALS (DEVELOPMENT & REGULATION) ACT, 1957 [AMENDMENT ACT (10 OF 2015) w.e.f. 12.01.2015]

– Section 8A and Mineral Concession Rules, 1960, Rule 24A(1) – Application for renewal of Mining lease and for removing curable defects – Lease expired on 18.11.1998 – Application for renewal moved on 13.11.1997 was rejected on the ground that defect in the application was not cured – Revision filed before Tribunal, Ministry of Mines was also dismissed – In interregnum Mines and Minerals (Development & Regulation) amendment Act came into force w.e.f. 12/01/2015 – Amendment of Mines & Minerals (Development & Regulation) Act, 1957 – Section 8A of Amendment Act – Applicability of Rule 24A of Rules of 1960 – Extension of lease period by operation of Law – Held – No valid and subsisting lease was there when amended provisions came into force, so extension of lease period as per Section 8A or Rule 24A does not apply, so by virtue of amended provisions of 2015 Act, State Authority is bound to deal with the matter by way of public auction and cannot entertain application for renewal of lease – Petition dismissed: *Pawan Kumar Ahluwalia Vs. Union of India, I.L.R. (2016) M.P. 1074 (DB)*

MINES AND MINERALS RULES, 1996

– Rule 53 and Land Revenue Code, M.P. (20 of 1959), Section 257 – Appropriate Authority is fully competent to pass order under Section 247(7) of the Code as also under Rule 53 of Rules, 1996: *Netaji Grih Nirman Sahkari Samiti Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 489 (DB)*

MINIMUM WAGES ACT (11 OF 1948)

– Section 13(1)(b) – See – Industrial Disputes Act, 1947, Section 25-B(2)(a): *Deputy Director, Nagariya Prashasan Vs. Satya Narain, I.L.R. (2016) M.P. 407*

– Section 20(1) – Scope & Jurisdiction – Held – Under the Act of 1948, there is no scope of enquiry to examine principles of equal pay for equal work which is a dispute to be determined by adjudicatory mechanism provided under law: *Steel Authority of India Ltd. Vs. Jaggu, I.L.R. (2019) M.P. 2173 (SC)*

– Section 20(1) – See – Contract Labour (Regulation and Abolition) Act, 1970, Section 10(1): *Steel Authority of India Ltd. Vs. Jaggu, I.L.R. (2019) M.P. 2173 (SC)*

MINOR MINERAL RULES, M.P., 1996

– Rule 2(xvi-b) & 68(1) Third Proviso – Term "Contractor" – Held – Contractor as defined in Rule 2(xvi-b) is a contractor who is granted trade quarry – Petitioners have not been granted trade quarry, they are the contractors engaged in Government contract – Expression contractor in third proviso to Rule 68(1) is clarified by words "engaged in construction work" – It has to be read together and not disjunctively: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620 (FB)*

– Rule 4 & 68(1) Third Proviso – Statutory Interpretation – Principle of Harmoniuos Construction – Held – No word in statute is superfluous and each word has its meaning – A proviso to statute has to be read as a whole by giving harmonious contruction to all provisions of law so that none of the provisions is rendered redundant – In view of such principle, third proviso is additional relaxation to Rule 4 and Rule 68(1) and is not illegal nor enlarges the scope of Rule 68(1) of the Rules of 1996: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620 (FB)*

– Rule 6, Schedule I, Serial No. 6 – See – Constitution – Article 226: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 2024 (FB)*

– Rule 6 & 7, Schedule I, Serial No. 5 & 6 and Schedule II, Serial No. 1 & 3 – Stone for Making Gitti by Mechanical Crushing (Mineral-G) – Grant/Renewal –

Held – Grant of renewal of quarry lease of Mineral-G at Serial No. 6 of Schedule-I and rest of mineral in Schedule I & II (except Serial No. 5 of Schedule I & Serial No. 1 & 3 of Schedule II on Government land) is governed by Rule 6 and could not be by way of open auction – Even quarry of minerals at Serial No. 3 of Schedule II situated in private land is covered by Rule 6, prescribing the procedure of its grant/renewal by Authority and not by auction: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 2024 (FB)*

– Rule 6 & 7, Schedule I, Serial No. 6 & Schedule II, Serial No. 3 – Stone for Making Gitti by Mechanical Crushing (Mineral-G) – Government/Private Land – Auction – Held – Rule 6 & 7 operate in different fields and cover different minerals specified in Schedule I & II – Mineral-G at Serial No. 6 of Schedule-I governed by Rule 6, cannot be taken for "Stone, Boulder, Road Metal Gitti, Rubble Chips etc. as mentioned in Serial No. 3 (Schedule II) governed by Rule 7 – Grant of quarry lease for Mineral-G cannot be by way of open auction – For Mineral-G, there cannot be two process, one by open auction for government land and another by way of grant for private land: *Trinity Infrastructure (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 2024 (FB)*

– Rule 30(26) – Conditions of quarry lease – Cancellation of lease – Collector has recommended the matter to the Director Geology and Mining, Bhopal for cancellation of lease – Therefore, petitioner do have a remedy of appeal u/r 57 of the Rules in case an adverse order is passed in the matter by the competent authority – No final order has been passed by the Director, Mining – Petition is pre-mature and dismissed: *Tanwar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1663*

– Rule 53 – See – Criminal Procedure Code, 1973, Section 451 & 457: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Rule 53 – See – Penal Code, 1860, Sections 109, 378 & 379: *Ashish Singh Vs. State of M.P., I.L.R. (2019) M.P. 689*

– Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18(6) – Contradictions – Held – Both Rules are not contradictory and occupy separate fields – 2006 Rules is in respect of transportation and storage of minerals including minor minerals contemplating only criminal proceedings whereas Rule 53 of 1996 Rules does not contemplate criminal proceedings but imposition of penalty in graded manner and forfeiture of minor minerals, tools, machines and vehicles etc. – Provisions of Rule 53 are in addition to provisions of prosecution under Rules 2006 in respect of minor minerals: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 53 & Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18(6) – Power of Confiscation – Competent Authority – Interpretation of Statutes – Held – Provisions of two statutes by same legislature have to be harmoniously read and if harmonious reading is not permissible then the later statute will amount to deemed repeal of the earlier: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 53 & 57 – See – Criminal Procedure Code, 1973, Section 451 & 457: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Rule 53(1), (2) & (3)(a) – Forfeiture of Mineral or Tools, Machines and Vehicles – Penalty – Held – Forfeiture of mineral or tools, machines and vehicles cannot be resorted to without giving an opportunity to violator to pay penalty in terms of Rule 53(1) of Rules of 1996 – Similarly, forfeiture of seized tools, machines and vehicles etc. in terms of Rule 53(3)(a) can be resorted to only when penalty in terms of Rule 53(1) is not paid – Forfeiture of vehicle, carrying mineral extracts without any transit pass, cannot be invoked at the first instance without giving the violator, an opportunity to pay penalty – Such process alone will save Rule 53(2) from vice of discrimination and arbitrariness: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 53(2) & (3) – Notice of Penalty – Compounding – Held – Benefit to seek compounding has to be exercised before serving of notice of imposition of penalty in terms of Rule 53(2) or in the event of seizure of tools, machines, vehicles and other material in terms of Rule 53(3) – Competent Authority is not required to give any option for compounding but the violator himself to volunteer and seek compounding: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 53(5) – See – Land Revenue Code, M.P., 1959, Section 247(7): *Vijay Luniya Vs. State of M.P., I.L.R. (2018) M.P. 2107 (DB)*

– Rule 53(6) – Word "Vehicles" – Omission – Interpretation – Held – The omission to incorporate the word "vehicles" in the last line of Rule 53(6) is unintentional and meaningless – Expression "other material" in the last line of Rule 53(6) would include "vehicles" – Material would include everything tangible including vehicles: *Nitesh Rathore Vs. State of M.P., I.L.R. (2018) M.P. 2315 (FB)*

– Rule 57 – Appeal, Review and Revision – An appeal is provided in case lease is cancelled by the competent authority: *Tanwar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1663*

– Rule 68 – See – Constitution – Article 226: *R.S.A. Builders & Const. (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. *21 (DB)*

– Rule 68(1) – Effect of Amendment in third Proviso – The statutory provision, as amended in the month of March 2013, now requires every quarry permit holder or contractor to obtain 'no mining dues' certificate from the Mining Officer/ Officer in charge concerned after due verification of documents submitted by the Contractor/quarry permit holder – Interpretation of statute – Per incuriam – Binding effect – The judgments relied by the petitioner were rendered either prior to the amendment or without noticing the amended provisions, they have lost their binding force with the efflux of time: *Suresh Chand Gupta (M/s.) Vs. State of M.P., I.L.R. (2016) M.P. *22 (DB)*

– Rule 68(1) Third Proviso – "No Mining Dues" Certificate – Held – Since minor mineral vests in State and there is absolute prohibition in extraction of mineral other than by quarry lease or a trade quarry or permit quarry, therefore contractor who is engaged in construction work is required to prove that such mineral is royalty paid – If State Government insist on "No Mining Dues" Certificate, the same cannot be said to be illegal – Further, State Government advised to develop and adopt alternate mechanism of issuance of online "No Mining Dues" certificate: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620 (FB)*

– Rule 68(1) Third Proviso – "No Mining Dues" Certificate – Periodical Certificates – Held – Condition of issuance of "No Mining Dues" certificate on furnishing of copy of work completion certificate is not reasonable – Running bills require periodical payments – Mining officer shall give "No Mining Dues" certificate at least quarterly on basis of running bills submitted by contractor engaged in construction work: *Pankaj Kumar Rai (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 2620 (FB)*

MODEL BYE-LAWS FOR BAR ASSOCIATION, M.P.

– Clause 26 & 27 – See – Advocates Act, 1961, Section 15 & 28: *Bar Association Lahar, Dist. Bhind Vs. State Bar Council of M.P., I.L.R. (2018) M.P. 667 (DB)*

MOHAMMEDAN LAW

– Clause 311 & 312 – See – Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3: *Syed Parvez Ali Vs. Smt. Nahila Akhtar, I.L.R. (2017) M.P. 1776*

MONEY LENDERS ACT, M.P. (13 OF 1934)

– Section 11B and Municipal Corporation Act, M.P. (23 of 1956), Section 69(3) & (4) – License – Requirement of Character Certificate – Held – Even if under the Act of 1934, there is no condition for obtaining a money lending license, but

in order to do business or trade, under the Act of 1956, Municipal Corporation is competent to impose conditions of requirement of character certificate, in public interest – As per Section 11 B of Act of 1934, it is always a discretion of registering authority to issue a certificate or not – Three criminal cases found pending against petitioner and on this ground his application for obtaining license was rejected, which cannot be said to be arbitrary and contrary to statutory provisions: *Mahesh Palod Vs. Assistant Commissioner (License), I.L.R. (2019) M.P. 991*

– Section 11B and Municipal Corporation Act, M.P. (23 of 1956), Section 403(2) – Alternate Remedy – Held – As per Section 403(2) of the Act of 1956, any order of Commissioner granting or refusal of license and permission is appealable to Appellate Committee – Petitioner having alternative remedy – Petition dismissed with said limited liberty to file appeal: *Mahesh Palod Vs. Assistant Commissioner (License), I.L.R. (2019) M.P. 991*

– Sections 11-B, 11-F & 11-H – Registration Certificate – Maintainability of Suit – Held – No suit for recovery of loan advanced by money lender, shall proceed in Civil Court until Court is satisfied that plaintiff has a registration certificate – Appellants/plaintiffs failed to prove that their firm was having any registration under the Act of 1934 – Trial Court rightly dismissed the suit inspite of finding that defendant no.1 had borrowed money from plaintiffs – Appeal dismissed: *Modi Kevalchand Through Partners (M/s.) Vs. Balchand (Dead) Through L.Rs., I.L.R. (2019) M.P. *62*

MOTOR VEHICLES ACT (4 OF 1939)

– Sections 47 & 57 – See – Motor Vehicles Act, 1988, Sections 80(1), 80(2) & 88: *Pawan Arora Vs. State of M.P., I.L.R. (2016) M.P. 2670*

MOTOR VEHICLES ACT (59 OF 1988)

– Determination of Income Towards Future Prospects – Held – In view of the law laid down by the Apex Court in SLP (Civil) No. 25590/2014 National Insurance company v/s Pranay Sethi, decided on 31.10.17 and looking to the facts of the present case, it is clear that in a case of deceased being self employed or on a fixed salary and below the age of 40 years, his heirs shall be entitled for 40% of the established income instead of 50% as awarded in the present case – With above modification, appeal disposed of: *Branch Manager, The Oriental Insurance Co. Ltd., Satna Vs. Smt. Ranju Yadav, I.L.R. (2018) M.P. 101 (DB)*

– Schedule II (Amended) – Compensation – Quantum – Held – Tribunal while passing award of compensation relied on a matter which was decided in 1995 where notional income was considered of that year, holding the income of deceased to be Rs. 500 per month – Schedule II was amended in the year 1999 whereby

minimum income of Rs. 15000 per annum was presumed to be the notional income in case where person was non-earning – Tribunal should have assessed the notional income of the deceased for the year 1999 – Compensation awarded was re-computed as per amended Schedule II of the Act of 1988 and was enhanced from Rs. 83,500 to Rs. 3,22,000 alongwith interest @ 8% per annum: *National Insurance Co. Ltd. Vs. Smt. Parwati Bai, I.L.R. (2017) M.P. 1467*

– Second Schedule – Compensation Amount – Quantum – Determination – No documentary or oral evidence regarding age, education, ownership of any agricultural land, income of corpus at the time of incident has been produced by the petitioner – Holding the age group of 35-40 years, applying the Second Schedule of Motor Vehicles Act, 1988, multiplier of 15 was applied and Amount of Rs. 4,80,000 granted towards loss of dependency, Rs. 50,000 towards loss of consortiums, Rs. 20,000 towards loss of love and affection to children and Rs. 30,000 towards loss of estate, a total amount of Rs. 5,80,000 was awarded: *Ramhit Lodhi Vs. State of M.P., I.L.R. (2017) M.P. 1050 (DB)*

– Sections 2(30), 50(2) & 166 and Central Motor Vehicles Rules, 1989, Rule 56 – Compensation – Term "Owner" – Appeal against rejection of compensation claim filed by the owner of the damaged truck – Held – Appellants have not filed the registration certificate of the vehicle in the name of deceased nor after his death, they (appellants) produced any evidence to prove their ownership – As per Section 166 of the Act of 1988 only the owner of the vehicle is entitled to receive the compensation for damage to the property in an accident – Impugned award upheld – Appeal dismissed: *Savitri Devi Tiwari (Smt.) Vs. Abdul Jabbar, I.L.R. (2017) M.P. *42*

– Section 41(6) – See – Motor Vehicles Rules, M.P. 1994, Rule 55-A: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Section 41(6) & 211 – See – Motor Vehicles Rules, M.P. 1994, Rule 55-A: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Section 56 – See – Motoryan Karadhan Adhiniyam, M.P., 1991, Section 3(1) & (2): *Puspraj Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 79 (DB)*

– Section 65(1) & 211 – See – Motor Vehicles Rules, M.P. 1994, Rule 55-A: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Section 65(2)(d) and Motor Vehicles Rules, M.P. 1994, Rule 48(2) – Inconsistency – Held – The condition that an application for issue or renewal of fitness certificate shall be accompanied with tax clearance certificate is not inconsistent with any provision of Central Legislation (Act of 1988): *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Section 65(2)(d), Motoryan Karadhan Adhiniyam, M.P., (25 of 1991), Section 3 and Motor Vehicles Rules, M.P. 1994, Rule 48(2) – Application for Fitness Certificate – Requirement of 'No Dues Certificate' – Competence of State Legislature – Held – Act of 1988 being Central Legislation does not contemplate grant of fitness certificate and it is left to be framed by State Government, therefore, issuance of fitness certificate and payment of tax falls within legislative competence of State in terms of Section 65(2)(d) of the Act of 1988 and u/S 3 of the Adhiniyam of 1991 – Rule 48(2) of the Rules of 1994 contemplating requirement of no dues certificate for grant of fitness certificate cannot be said to be illegal – Petition dismissed: *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Section 68 and Motor Vehicles Rules, M.P. 1994, Rule 63 & 65 – State Transport Authority – Quorum of Meeting – Held – Application for change of time schedule of permit was filed before State Transport Authority – Quorum of meeting of the Authority is three – Accordingly, Chairperson and two members heard the application in meeting dated 16.10.14 and order was subsequently pronounced on 15.12.14 but the order was signed by only Chairperson and one member, the third member having been transferred in the meanwhile – Petitioner challenged the legality of the order whereby the High Court held the order to be illegal – State filed an appeal whereby the same was also dismissed by Division bench of the High Court – Challenge to – Held – Order passed by the State Transport Authority, a multi member body, signed by the Chairperson and one member is a valid order having been issued with the majority opinion of two out of three, who heard the application – No illegality in the order – Judgments of the High Court set aside – Appeal allowed: *State of M.P. Through Principal Secretary Vs. Mahendra Gupta, I.L.R. (2018) M.P. 831 (SC)*

– Sections 80(1), 80(2) & 88 and Motor Vehicles Act (4 of 1939)(Repealed), Sections 47 & 57 – Petitioners – Stage Carriage Operators – Application for grant of permanent permit of stage carriage – Whether the provisions of Sections 80(1) and 80 (2) of the Act of 1988 and the M.P. Motor Vehicle Rules, 1994 framed thereunder in contrast to Section 47 & 57 of the Act of 1939 empowers the Competent Authority to provide for cut off date for filing of documents in relation to pending applications and new applications on or before of cut off date and also requiring application to be published for inviting objections – Held – No, the impugned acts of fixing cut off date for submission of documents and as well as inviting objections are against the provisions of Section 80(1) & 80(2) of the Act of 1988 and is in excess of the Authority of law as there is no provisions of cut off date & for invitation of objections under Sections 80(1) & 80(2) of the Act of 1988 whereas, Sections 47 & 57 of the Act of 1939 prescribes for the cut off date & inviting objections – Impugned notice & Agenda is quashed – Concerned Authority to consider the new application filed or documents filed in support of pending applications in accordance with law – Petition allowed: *Pawan Arora Vs. State of M.P., I.L.R. (2016) M.P. 2670*

– Sections 146, 147 & 166 – "Act Policy" – Compensation Amount – Liability – Held – Although Policy was an "Act Policy" wherein occupant of vehicle or pillion rider is not covered but from the instant policy, it is clear that gratuitous passengers were insured by the company by charging additional premium – Insurance Company held jointly and severally liable to pay amount of Rs, 1,59,200 calculated as compensation – Maximum liability of insurance company fixed at Rs. 1,00,000, therefore it can recover the remaining amount from insured/owner: *National Insurance Co. Ltd. Vs. Dilip Kumar Jain, I.L.R. (2019) M.P. 2537*

– Section 166 – Appreciation of Evidence – Credibility of Witness – Held – As per FIR lodged by eye witness, accident occurred by unknown four wheeler but according to other eye witness (PW-3), accident caused by the alleged truck – No evidence to show, how police knew that PW-3 witnessed the accident and chased the offending truck – PW-3 is planted witness and his conduct of not informing police about accident while he passed by the police station, makes him unreliable – Claimants failed to prove that deceased died in a accident with truck in question – Appeal allowed: *HDFC Agro General Insurance Co. Ltd. Vs. Smt. Anita Bhadoria, I.L.R. (2020) M.P. *24*

– Section 166 – Compensation – Rash and negligent – Accident – Claim for damages jointly and severally from owner, driver and insurance company – Plea of insurance company that the driver of the vehicle did not have a valid driving license and loading rickshaw has been driven without the fitness certificate – Conditions of insurance policy were found proved – Insurance company exonerated: *Karan Singh Vs. Omprakash, I.L.R. (2016) M.P. 538*

– Section 166 – Evidence of Criminal Case – Held – Documents of criminal case are not decisive factors for deciding claim petition – It has to be decided on basis of evidence led in claim petition: *HDFC Agro General Insurance Co. Ltd. Vs. Smt. Anita Bhadoria, I.L.R. (2020) M.P. *24*

– Section 166 – Medical evidence – Causes of ARDS (Acute Respiratory Distress Syndrome) are not present in the case – No medical evidence to show that such a medical condition can be caused due to drug abuse during treatment for the injuries suffered in the accident – Inference drawn by tribunal appears to be proper – No interference required: *Bilkeesh Bano (Smt.) Vs. Kulvinder Singh, I.L.R. (2017) M.P. *2*

– Section 166 and Criminal Procedure Code, 1973 (2 of 1974), Section 357(3) – Compensation & Sentence – Held – Grant of compensation under Act of 1988 is in a different sphere altogether – Grant of compensation u/S 357(3) Cr.P.C. with a direction to be paid to the person who has suffered any loss or injury by reason of the

act for which accused has been sentenced has a different contour and is not to be regarded as a substitute in all circumstances for adequate sentence: *Bhagirath Vs. State of M.P., I.L.R. (2020) M.P. 210*

– Section 166 and Income Tax Act (43 of 1961), Section 194-A(3)(ix)(ix-a) – Deductions on Amount of Interest – Scope – Held – Insurance company is liable to deduct TDS on the interest paid by it as per provisions of Section 194-A(3)(ix)(ix-a) of the Act of 1961 and if assessee is of the view that, tax has been deducted in excess, then he can always claim refund of the same from income tax department – Impugned order set aside – Petition allowed: *National Insurance Co. Ltd. Vs. Smt. Ram Khiloni alias Khiloni, I.L.R. (2020) M.P. 696*

– Section 166 r/w 140 – See – Evidence Act, 1872, Section 155: *Anshul Mandil Vs. Smt. Sushila Kohli (Dead) Through LRs., I.L.R. (2019) M.P. *65*

– Section 166 & 173 – Disability – Compensation – Quantum – In an accident, appellant was severly injured and during treatment, his left leg was amputated from thigh portion – As per doctor certificate, he sustained 90% permanent disability – MACT recorded 60% permanent disability and holding his income to be Rs. 15000 p.a. and applying multiplier of 18, awarded total amount of Rs. 2,75,000 where Rs. 60,000 was awarded for artificial limb – In appeal, the High Court holding his income to be Rs. 24,000 p.a. and applying the multiplier of 17, enhanced the total amount to Rs. 3,57,800 – Challenge to – Held – Appellant was 29 years old at the time of accident and after suffering this major injury in accident, with the amputated leg, he cannot pursue his livelihood as a driver (as he used to be) or daily wage labourer and further taking into account doctor's certificate showing 90% permanent disability, holding his income to be Rs. 24,000 p.a. and applying multiplier of 17, the compensation amount is enhanced to Rs. 5,20,000 which includes Rs. 1,00,000 for cost of artificial limb instead of Rs. 60,000 as awarded earlier – Appellant also entitled for interest @ 6% p.a. from date of claim till realization of amount – Appeal allowed: *Lal Singh Marabi Vs. National Insurance Co. Ltd., I.L.R. (2017) M.P. 1619 (SC)*

– Section 166 & 173 – Enhancement – Future Prospects – Entitlement – Held – Apex Court concluded that future prospects are payable even when deceased is self employed – Deceased, a fruit vendor aged about 45 yrs. at the time of incident – Claimants entitled for 40% of total income by way of future prospects: *Gurkho Bai (Smt.) Vs. Kuver Singh, I.L.R. (2019) M.P. *52*

– Section 166 & 173 – Liability of Insurance Company – Held – In application u/S 166 of the Act of 1988, profession of deceased shown as cleaner – It is clear that statement of respondent no. 1 is totally false and concocted to escape from his liability because deceased was not possessing driving license at the time of

accident – Respondent no. 1 is owner and driver of offending vehicle and has failed to prove that at time of accident, tractor was used for agricultural purpose for which it was insured – Insurance company not liable to pay compensation – Appeal allowed: *Shriram General Insurance Co. Ltd. Vs. Jagdish Prasad Dubey, I.L.R. (2017) M.P. *122*

– Section 166 & 173 and Civil Procedure Code (5 of 1908), Order 41 Rule 22 – Appeal – Cross Objection Against Co-Respondent – Maintainability – Held – In instant case, relief sought in cross objection is intermixed with relief granted to the other respondents – Cross objection filed by claimant (respondent herein) against appellant/insurance company and other co-respondents (driver and owner) is maintainable: *National Insurance Co. Ltd. Vs. Dilip Kumar Jain, I.L.R. (2019) M.P. 2537*

– Section 166 & 173 and Penal Code (45 of 1860), Section 154 – Held – FIR is not a substantive piece of evidence, although the same can be used for corroboration and contradiction purposes – Evidence before Court is the substantive evidence: *National Insurance Co. Ltd. Vs. Dilip Kumar Jain, I.L.R. (2019) M.P. 2537*

– Sections 166 & 173 (1) – Permanent disablement – For enhancement of amount of award – If the medical certificate produced by appellant was suspicious, it was the duty of insurance company to enquire and produce sufficient evidence in this regard – No such evidence produced therefore certificate cannot be disbelieved – Disability assessed may be taken as correct – Amount of award passed by the Tribunal enhanced: *Savita Bai Vs. Aslam, I.L.R. (2017) M.P. 100*

– Section 168 & 173 – Compensation – Future Prospects – Entitlement – Held – Compensation under the head "future prospects" cannot be granted to an unemployed or a labourer/ employee who is not having a stable job – Deceased working as a porter (hammal), is not a stable job and cannot be termed as self-employed – Not entitled for compensation under the head of "future prospects" – Appeal dismissed: *Vinita (Smt.) Vs. Anil Kumar Dubey, I.L.R. (2019) M.P. *72*

– Section 168 & 173 – Compensation – Future Prospects – Self-Employed – Held – Apex Court concluded that where deceased was a self-employed person, his dependents are entitled for compensation under the head of "future prospects": *Vinita (Smt.) Vs. Anil Kumar Dubey, I.L.R. (2019) M.P. *72*

– Section 173 – Appeal & Cross-Objection – Practice – Respondent contending that under the head of loss of estate, loss of consortium as well as funeral expenses, excessive amount has been awarded by Tribunal – Held – In absence of any appeal or cross objection by respondents, no adverse orders can be passed against appellants: *Gurkho Bai (Smt.) Vs. Kuver Singh, I.L.R. (2019) M.P. *52*

– Section 173 – Liability of Insurance Company – Driving License – Validity – Burden of Proof – MACT awarded compensation of Rs. 83,500 alongwith interest to respondents no. 1 to 3, being wife and children of deceased – Challenge to – Held – It was the plea of the insurance company that driver of the offending vehicle was not having a valid driving license on the date of incident – Accident took place on 05.04.1999 and in the photocopy of the license of driver of offending vehicle, it was mentioned that it was renewed from 11.01.1999 to 10.01.2001 – Burden of proof was on the Insurance Company to prove that the renewal entry was fake and it was not done by the licensing authority and to get the certificate from the licensing authority to that effect – Insurance company failed to discharge its burden – Further held – When license was renewed from time to time, then it shall be presumed that it was properly renewed unless rebutted by the insurance company – In such circumstances, insurance company cannot be absolved from its liability to pay compensation: *National Insurance Co. Ltd. Vs. Smt. Parwati Bai, I.L.R. (2017) M.P. 1467*

– Section 173 – Liability of Insurance Company – Principle of Pay & Recover – Held – Claimant is a third party, therefore even though, it is proved that driver/ owner of offending vehicle was driving in breach of policy conditions, insurance company is absolved of its liability but principle of "Pay and Recover" applies – Tribunal has a power to direct insurance company to first pay and then recover the same from owner/driver – Appeal dismissed: *Shriram General Ins. Co. Ltd. Vs. Pappu, I.L.R. (2020) M.P. 453*

– Section 173 – Miscellaneous Appeal – Against the order passed in review petition – Deceased was travelling in a bus, due to rash and negligent driving of the offending vehicle (tractor) the same dashed against the bus – The offending vehicle was hypothecated with UCO Bank under hire purchase agreement – As per agreement between the bank and the insurance company the bank had got the vehicle insured with the insurance company and has been paying the premiums – As such the liability is on Bank to pay the premiums – The policy was purchased on 21.04.2006 after debiting of amount of premium from loan account of the borrower and the draft was prepared on 21.04.2006 – If the draft is prepared on 21.04.2006 and submitted to the insurance company on 26.06.2006 this by itself would not lead to the conclusion that the bank had ante dated the same in collusion with the appellants to cover the risk of accident occurred in the intervening night of 24/25.04.2006 – Appeal allowed: *Brijpal Vs. Mrs. Munni Bai, I.L.R. (2016) M.P. 3329*

– Section 173 – Principle of Pay and recover – Liability of Insurance Company when driver of the offending vehicle had no valid driving licence at the time of accident – Held – Insurance Co. cannot be immuned from application of pay and recover provision – Appeal dismissed: *IFFCO Tokyo General Insurance Co. Ltd. Vs. Ghasiram, I.L.R. (2017) M.P. *35*

– Section 173(1) – For enhancement of amount of award – Tribunal not allowed the bills & receipts on the ground that no oral evidence produced as whether the doctors who received money ever treated the deceased and certain receipts were after the death of deceased – Held – Receipts were not challenged by respondents – No evidence produced to show receipts were false – Oral evidence of son of deceased also remained unchallenged – Looking to the financial status of deceased and his family it was possible that payments were made after the death of deceased – Tribunal erred in not allowing the receipts and bills – Receipts of Rs. 48,505/- which was not allowed by tribunal is allowed – Total medical expenses Rs. 1,23,505/- adding transportation & nutritious diet comes to Rs. 1,35,000/-, Rs. 10,000/- for pain and suffering – Appellant entitled to recover total Rs. 1,45,000/- with 6% rate of interest from date of presentation of application with cost of appeal Rs. 2000/- – Appeal partly allowed: *Bilkeesh Bano (Smt.) Vs. Kulvinder Singh, I.L.R. (2017) M.P. *2*

– Section 180 & 181 – See – Criminal Procedure Code, 1973, Section 482: *Arun Kapur Vs. State of M.P., I.L.R. (2017) M.P. 1008*

MOTOR VEHICLES RULES, M.P., 1994

– Rule 8-A and Evidence Act (1 of 1872), Section 114(e) – Data Updation in Official Website – Presumption – Held – There is a presumption that official acts are performed regularly in terms of Section 114(e) of the Act of 1872, thus there will be a presumption of correctness of information available on website – Aggrieved transporter cannot be permitted to approach writ Court submitting that data on website is not updated and reflecting non-payment of tax – However, State directed to update the entire data in website and make necessary amendments in software, if required: *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Rule 48(2) – See – Motor Vehicles Act, 1988, Section 65(2)(d): *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Rule 55-A and Motor Vehicles Act (59 of 1988), Section 41(6) – Powers of State – Held – Rule 55-A is within the ambit of powers delegated to State and directly related to performance of its functions u/S 41(6) for which it could legitimately claim a fee, as was done through Rule 55-A: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Rule 55-A and Motor Vehicles Act (59 of 1988), Section 41(6) & 211 – Registration Numbers to Motor Vehicles – Prescribed Fee – Validity – Held – Assignment of "distinctive Marks" i.e. registration number to motor vehicle, which includes power to reserve and allocate them for a specific fee, is a distinct service for which State or their authorities (Registering Authority) are entitled to charge a prescribed fee – Rule 55-A is not in excess of powers conferred upon State by the

Act of 1988 or Central Rules – Rule is not ultra vires – Appeal allowed: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Rule 55-A and Motor Vehicles Act (59 of 1988), Section 65(1) & 211 – Power to frame Rules – Held – Generality of the power u/S 65(1) to frame Rules is sufficient alongwith Section 211 to conclude that State Government has the authority to prescribe a fee for reserving certain numbers or distinguishing marks to be assigned as registration numbers: *State of M.P. Vs. Rakesh Sethi, I.L.R. (2020) M.P. 1995 (SC)*

– Rule 63 & 65 – See – Motor Vehicles Act, 1988, Section 68: *State of M.P. Through Principal Secretary Vs. Mahendra Gupta, I.L.R. (2018) M.P. 831 (SC)*

– Rule 72 – Carriage permit – One application is confined only to one permit for a single route as single permit for two different routes is not permissible: *Vijay Bajaj Vs. State of M.P., I.L.R. (2016) M.P. 45 (DB)*

– Rule 72 (3) – See – Motor Vehicle Taxation Act, M.P., 1991, Section 3: *Ramsewak Sharma Vs. State of M.P., I.L.R. (2016) M.P. 722 (DB)*

MOTOR VEHICLE TAXATION ACT, M.P. (25 OF 1991)

– Section 3 and Motor Vehicle Rules, M.P., 1994, Rule 72 (3) – Grant of permanent permit – Order granting permanent permit passed by RTO was set aside in revision on the ground that sons of petitioner, who are engaged in same business are in arrears of tax – Arrears of taxes – Lacs of rupees were due on the members of the joint family of the petitioner – No dues certificate not filed – Hence, impugned order does not require any interference: *Ramsewak Sharma Vs. State of M.P., I.L.R. (2016) M.P. 722 (DB)*

MOTORYAN KARADHAN ADHINIYAM, M.P. (25 OF 1991)

– Section 3 – See – Motor Vehicles Act, 1988, Section 65(2)(d): *Rajesh Kumar Miglani Vs. State of M.P., I.L.R. (2017) M.P. 2671 (DB)*

– Section 3/16(3) – See – Criminal Procedure Code, 1973, Section 482: *Jai Prakash Sharma Vs. State of M.P., I.L.R. (2019) M.P. 223*

– Section 3(1) & (2) and Motor Vehicles Act (59 of 1988), Section 56 – Contradictory Provisions – Registration Certificate, Fitness Certificate and Imposition of Tax – Held – As per Section 3 of the State Act, levy of tax is not only on a vehicle which is used but also on a vehicle which is kept for use – Section 3(2) raises a statutory presumption that if certificate of registration is valid then the transport vehicle

is presumed to be in use or kept for use notwithstanding the expiry of the certificate of fitness – For want of fitness certificate, liability of the owner of vehicle cannot be absolved to pay tax under the State Act – Further held – Issuance of registration certificate is dependent upon fitness certificate but once the vehicle is registered, Section 56 of the Central Act does not lead to the consequence that registration certificate is deemed to be cancelled or it becomes ineffective for the reason that fitness certificate ceased to be valid for any reason – Once the vehicle is registered, the registration certificate can be suspended in terms of Section 53 or cancelled u/S 55 of the Central Act but there is no deemed cancellation of registration for not possessing fitness certificate: *Puspraj Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 79 (DB)*

MUNICIPAL ACCOUNT RULES, M.P., 1971

– Rule 152 – See – Municipalities Act, M.P., 1961, Section 41-A & 51-A: *Preeti Swapnil Agarwal Vs. State of M.P., I.L.R. (2020) M.P. 364*

MUNICIPAL (COMPOUNDING OF OFFENCE OF CONSTRUCTION OF BUILDINGS, FEES AND CONDITIONS) RULES, M.P., 2016

– Rule 3 & 5, Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 30 and Bhumi Vikas Niyam, M.P, 2012, Rule 12 – Construction without Permission – Compounding – Held – Under Rules of 2016, if any application for compounding is submitted to which compounding is ordered, on deposit of said amount, it would be deemed to be permission granted under the provisions of Municipal Act as well as under the provisions of Adhiniyam of 1973 and Rules of 2012 and bye laws made thereunder – Prior to issuing a show cause notice, authorities should have applied their mind and also exercised their discretion for purpose of compounding of building, if raised without permission – Without taking such recourse, issuance of notice of demolition is not permissible – Impugned notice quashed – Petition allowed: *Ramesh Verma Vs. Indore Municipal Corporation, I.L.R. (2018) M.P. 1127*

MUNICIPAL CORPORATION ACT, M.P. (23 OF 1956)

– Section 9(1)(c) and Municipalities Act, M.P. (37 of 1961), Section 19(1)(c) – Nominations of Alderman – Nominations challenged on the ground of special knowledge or experience – Held – Whether a candidate has special knowledge or experience in municipal administration, is a decision of State Government under its exclusive jurisdiction – Mere fact that such decision is not to the likings of another political group does not mean that satisfaction recorded by State Government can be

permitted to be disputed in writ petition – Present case is not one where nominated councillors do not satisfy the eligibility criteria as laid down under statutes – No procedural infirmity in such nominations – Petition dismissed: *Vinayak Parihar Vs. State of M.P., I.L.R. (2018) M.P. 1101 (DB)*

– Sections 58(5) & 58(6) – See – Service Law: *Pawan Kumar Singhal Vs. State of M.P., I.L.R. (2017) M.P. *10*

– Section 69(3) & (4) – See – Money Lenders Act, M.P., 1934, Section 11B: *Mahesh Palod Vs. Assistant Commissioner (License), I.L.R. (2019) M.P. 991*

– Section 80 – See – Specific Relief Act, 1963, Sections 5 & 39: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Section 80, Transfer of Property Act (4 of 1882), Section 108 and Specific Relief Act (47 of 1963), Section 39 – Suit for mandatory injunction for recovery of possession – Dismissed by Trial Court – Statutory lease granted by Municipal Corporation – Initially lease was executed in the year 1926 which expired in year 1956 – Lease was not renewed however appellant continued in possession – Premium also accepted by Municipal Corporation – Renewal of lease done on 19.12.1989 for a period of 60 years including regularization of lease with understanding that Corporation to remove the encroachment on the land – Encroachment removed in the year 1999 – Corporation entering in possession in the year 1999 but not giving possession to appellants – Hence, the suit – Held – As the lessor was accepting premium of the land, so it was responsibility of the lessor to put the lessee in possession of the land, so that lessee can enjoy the fruit of the lease – Finding refusing delivery of possession set aside – Suit of the appellants decreed to that extent – Appeal allowed: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Sections 132(1)(c)(d)(e), 132-A & 132(6)(o) and Upkar Adhiniyam, M.P., 1981 (1 of 1982), Section 6, Part II – Petitioner is an Educational Institution – Imposition of taxes; water cess, education cess and urban development cess – Education cess can be levied as per Section 132(6)(o) of 1956 Act and also the water tax u/S 132-A of 1956 Act, but as far as imposition of urban development cess is concerned, its imposition and recovery cannot be upheld as per second proviso to Section 6 of 1981 Adhiniyam, as amended on 21.05.2007 because of the exemption of the lands or buildings or both from payment of the property tax: *Essarjee Education Society Vs. State of M.P., I.L.R. (2016) M.P. 2982 (DB)*

– Sections 132(1)(c)(d)(e) & 132(6)(o) – Whether recovery of tax since 2010 is invalid because of retrospective demand – Held – No, as the taxes and cess

are of previous years, and due to its non-payment, the demand of those years has been raised after passing of resolution u/S 133 of 1956 Act, so the plea is misconceived: *Essarjee Education Society Vs. State of M.P., I.L.R. (2016) M.P. 2982 (DB)*

– Section 136 and Municipality (Determination of Annual Letting Value of Building/Lands) Rules, M.P. 1997, Rule 10(1) – Educational institution – Whether exemption from payment of property tax under Section 136(c) of 1956 Act means exemption from filing the return – Held – No, even if an institution is exempted from payment of property tax under Section 136(c) of 1956 Act, then also it is obligatory for the owner to file the return as per Rule 10(1) of the 1997 Rules: *Essarjee Education Society Vs. State of M.P., I.L.R. (2016) M.P. 2982 (DB)*

– Sections 173, 174, 302 & 307 – Demand Notice – Procedure and Grounds – Held – Prior to taking action u/S 174 of the Act of 1956, the procedure as prescribed in Chapter XII, Section 173(2) and 174 has to be followed which was not done in present case – In absence thereto, issuance of notice u/S 174 is not permissible – Further, notice do not specify on which land of MOS, construction has been carried out specifying the area of illegal construction by making sketch or map of it – Without such specifications, notice is vague and if any action on basis of such notice is taken, same is invalid under law – Notice of demand quashed – Petition allowed: *Bhagwandas Vs. Nagar Palika Nigam, Ratlam, I.L.R. (2018) M.P. 2166*

– Sections 173, 174, 302 & 307 – Demolition Expenses – Demand Notice – Held – Notice for recovery of expenses incurred in demolition of alleged illegal construction does not come under the provisions of "Notice of Demand" specified in Sections 173 and 174 of the Act of 1956: *Bhagwandas Vs. Nagar Palika Nigam, Ratlam, I.L.R. (2018) M.P. 2166*

– Sections 203(2), 302, 307, 308, 403 & 421 – Illegal construction work changing the purpose of the building – Appellant who is a builder, after receiving the notice has made unauthorized construction – He was directed to stop the work immediately even though he ignored the notice and continued the illegal construction work – Appellant has changed the purpose of building from residential to commercial – Such construction cannot be regularized – Appellant cannot be absolved from the liability of removal of illegal construction: *MSJ Colonizing & Leasing Company Ltd. Vs. Indore Municipal Corporation, Indore, I.L.R. (2016) M.P. 967 (DB)*

– Section 255 & 366 (6) – Closing the slaughterhouse/shop – When the license was granted under the provision of Madhya Pradesh Municipal Corporation Act, 1956 then it can be suspended only where the restriction or condition mentioned in the license are infringed or evaded by the grantee or if the grantee is convicted of a breach of any provision of this Act or any Act or any rule or bye-law – In absence

of any such violation of condition, license cannot be cancelled: *Jitendra Kumar Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 308 (DB)*

– Section 292 and Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rules 10(4), 10(13)(i)(ii) & (iii) & 12(iv) – Release of Mortgaged Plots – Colonizer may opt for giving bank guarantee of an amount under Rule 12(iv) for mortgaged plots – If colonizer does not wish to sell plots to persons belonging to EWS or LIG in his colony, then he is liable to deposit shelter fee as per Rule 10(4) – No direction can be given to respondents for release of mortgaged plots in favour of petitioner without complying provisions of Rule 10(13)(i),(ii) & (iii) – Petition dismissed: *Divine City Pvt. Ltd. Vs. State of M.P., I.L.R. (2019) M.P. *30*

– Sections 293, 294 & 296 – See – Constitution – Article 226: *Sanjay Gangrade Vs. State of M.P., I.L.R. (2019) M.P. 1227 (DB)*

– Sections 305 & 306 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013) – Constitution – Entry No. 5 of List II (State list) – Entry No. 42 of List III – Whether Sections 305 & 306 of the Act of 1956 is repugnant to the Central Act of 2013? – Held – That the Act of 1956 (State Act) would squarely fall under Entry 5 of List II of Seventh Schedule and provisions u/S 305 & 306 are incidental thereto whereas the Act of 2013 (Central Act) is a law regarding acquisition etc. of land and falls under Entry 42 of List III of the Seventh Schedule, so the argument of repugnancy with the provisions of the Act of 2013 is not available, as the Act of 1956 falls under Entry 5 of List II and Act of 2013 falls under Entry 42 of list III and the question of repugnancy arises only when both the Union and State laws relate to a subject in List III – Argument of repugnancy is rejected: *Municipal Corporation, Bhopal Vs. Prem Narayan Patidar, I.L.R. (2016) M.P. 2938 (DB)*

– Sections 305, 306, 322, 323 & 387, Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 56 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013) – "Acquisition of Land" or "Vesting of Land" – Petitioners – Land owners – Possession of land/buildings without acquiring the same and payment of compensation – Purpose – Construction/widening of Road/Street – Against it Writ Petition – Relief – Compensation to be paid as per the Act of 2013 or under the provision of the Act of 1956 – Challenge as to by Municipal Corporation – Intra court Appeals – Held – As the possession of Land/buildings is being taken for specified use i.e. Construction/ Widening of streets, so it will amount to "vesting of Land" under Section 305 of the Act of 1956 and not as "acquisition of land" – consequent to "vesting", the corporation is empowered to remove all obstructions and encroachments falling within the street by invoking power under Sections 322 and 323 of the Act of 1956 and if any loss or

damage is caused to any person due to such act of removal, the owner is entitled for compensation as specified u/S 306 of the Act of 1956 & if owner is dissatisfied with the compensation amount then it can take recourse of Arbitration before District Court under Section 387 of the Act of 1956 – Writ appeals allowed: *Municipal Corporation, Bhopal Vs. Prem Narayan Patidar, I.L.R. (2016) M.P. 2938 (DB)*

– Section 307(5) – Disputed Ownership – Held – Proceedings u/S 307(5) of the Act of 1956 is not like civil suit where title of parties can be decided but prima facie it can be looked into whether the person who has applied for building permission is owner or not: *Shailendri Goswami (Smt.) Vs. Indore Municipal Corporation, I.L.R. (2017) M.P. *146*

– Section 308-A – Compounding of violation – The failure of the owner to provide open spaces within the plot is not a compoundable construction in terms of Section 308-A of the Municipal Corporation Act, 1956 – As per the Municipal Corporation, had the construction been compoundable, compounding fee would have been Rs. 3,84,57,697.50 but since it is a non-compoundable construction, twice the amount of compoundable fee is considered reasonable so as to enable the corporation to provide multilevel parking near the plot in question: *Satish Nayak Vs. State of M.P., I.L.R. (2018) M.P. 1895 (DB)*

– Section 308(A) and Municipal (Compounding of Offence of Construction of Buildings, fees and Conditions) Rules, M.P. 2016 – Rule 5 – Notice for Demolition – Held – If construction was raised by petitioner without permission and if he applies for compounding of the same, without considering such application on merits, in terms of the Rules of 2016, demolition ought not to be made by the authorities – Such compounding is permissible looking to conditions (a) and (b) of Section 308-A of the Act of 1956 and Rule 5 of the Rules of 2016: *Ramesh Verma Vs. Indore Municipal Corporation, I.L.R. (2018) M.P. 1127*

– Section 308-A & B – Section 308-A inserted in the act w.e.f. 30.05.1994 and Section 308-B which is relaxation from the provision of Section 308-A, inserted w.e.f. 25.08.2003 – Provisions have no application to the present case as the construction of building in question was already completed in the year 1993: *MSJ Colonizing & Leasing Company Ltd. Vs. Indore Municipal Corporation, Indore, I.L.R. (2016) M.P. 967 (DB)*

– Section 401 & Civil Procedure Code (5 of 1908), Section 80 – Notice – Held – Objection as to non-issuance of notice u/S 401 of Act of 1956 lost significance as Corporation was issued notice u/S 80 CPC, moreso when defendant/State chose to remain reticent not only at the initial stage but even after framing of issues – Purpose of notice to bring the dispute before parties has been done: *State of M.P. Vs. Smt. Betibai (Dead) Through Her LRs., I.L.R. (2020) M.P. 2826*

– Section 401 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Respondents/plaintiff issued notice to Municipal Corporation u/S 401 of the Act of 1956 and subsequently filed civil suit for permanent injunction and demolition of construction – Petitioner/defendant no.1 filed application under Order 7 Rule 11 C.P.C. on the ground that suit was filed before expiry of 30 days period from the date of issuance of notice which is not maintainable as per Section 401 – Application rejected – Challenge to – Held – Main relief claimed by plaintiff relating to easementary right is against defendant no. 1 who cannot be treated as a 'person' as provided u/S 401 of the Act – Further held – Cause of action and grievance are beyond the purview and clutches of Section 401 and when there are certain independent cause of action which are not hit by Section 401 of the Act, the entire suit cannot be dismissed – Revision dismissed: *Dilip Kumar Rahira Vs. Santa Kanwarram Griha Nirman Sahakari Samiti, I.L.R. (2018) M.P. *51*

– Section 403(2) – See – Money Lenders Act, M.P., 1934, Section 11B: *Mahesh Palod Vs. Assistant Commissioner (License), I.L.R. (2019) M.P. 991*

MUNICIPAL CORPORATION (APPOINTMENT AND CONDITIONS OF SERVICE OF OFFICERS AND SERVANTS) RULES, M.P., 2000

– Rule 10 & 13 – Promotion – Denial of promotion to the post of Superintending Engineer by the State Government, although, the same was recommended by the DPC and approved by the Mayor-in-Council – Assailed on the ground that it is not required to possess the degree in Engineering for promotion to the post of S.E – Held – Petitioner is eligible for promotion to the post of Superintending Engineer, as he possesses 5 years of experience on the post of Executive Engineer, which has been prescribed as eligibility criteria under Rule 10 of Rules 2000 – Amendment made in Rules 2000 w.e.f. 15.07.2015 does not apply to the case of the petitioner – Impugned order and the order rejecting representation are quashed – Petition is disposed of directing the Government to pass an appropriate orders: *Hanuman Prasad Verma Vs. State of M.P., I.L.R. (2016) M.P. 2505*

– Schedule (I) r/w Rules 3 & 4 – See – Service Law: *Pawan Kumar Singhal Vs. State of M.P., I.L.R. (2017) M.P. *10*

MUNICIPAL COUNCIL

– External Development Charges – Government Entity – Certain forest lands which were within the Municipal limits were alloted to respondents – Municipal Council served them a notice to deposit external development charges – Respondent filed a civil suit which was allowed holding that Municipal Council have no right to

recover such charges from respondents – Municipal Council filed an appeal before High Court whereby the same was also dismissed – Challenge to – Held – Perusal of State Government orders makes it clear that they are meant for housing construction societies, colonizers and individual persons – Respondents are neither colonizers nor house construction societies or individuals – Dwelling units developed by respondents are for their employee only and not meant for sale or for letting out on rent – Construction has been done by Government entities being Public Sector Undertakings with the investment of Central Government – Trial Court and High Court rightly held that respondents are not liable to pay any external development fee to appellant – Appeals dismissed: *Municipal Council, Raghogarh Vs. National Fertilizer Ltd., I.L.R. (2018) M.P. 827 (SC)*

MUNICIPAL EMPLOYEES (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P. 1968

– Rule 9 & 10(2) – See – Penal Code, 1860, Section 302 & 323: *Shambhu Khare Vs. State of M.P., I.L.R. (2018) M.P. *11*

– Rule 10(2)(b) – Disqualification – Stay of Sentence/Stay of Conviction – Held – As per Rule 10(2)(b), if a person has been convicted of an offence which involves moral turpitude then he is disqualified for appointment to Municipal services – In the present case, execution of sentence is stayed but the conviction continues to operate – Neither the order of conviction has been stayed nor conviction has been set aside by the High Court – Respondent no. 5 not entitled to continue on the post – Writ of quo-warranto issued against respondent no.5 directing the respondents to place him under suspension: *Raju Ganesh Kamle Vs. State of M.P., I.L.R. (2018) M.P. 64*

– Rule 51 – Initiating Disciplinary Proceedings – Competent Authority – Held – Rule 51 deals with competence of disciplinary authority to inflict minor or major penalty but does not relate to competence to initiate disciplinary proceedings: *State of M.P. Vs. Pradeep Kumar Sharma, I.L.R. (2020) M.P. 1066 (DB)*

MUNICIPAL SERVICE (EXECUTIVE) RULES, M.P., 1973

– Rule 13 (amended) – Post of Chief Municipal Officer – Eligibility – Held – Post of CMO should be given to those who fall in the feeder cadre to the post of Chief Municipal Officer – Employees/post which are eligible or to be considered for promotion to the post Chief Municipal Officer Class A, Class B & Class C enumerated: *Vijay Kumar Sharma Vs. State of M.P., I.L.R. (2020) M.P. 2788*

– Rule 13 (amended) – Promotion – Post of Chief Municipal Officer – Held – Since petitioners were only having charge of Chief Municipal Officer and

their substantive post were different, therefore they have no right to continue as Chief Municipal Officer – Petitions disposed with directions: *Vijay Kumar Sharma Vs. State of M.P., I.L.R. (2020) M.P. 2788*

– Rule 31, 33 & 34 – Disciplinary Proceedings – Competent Authority – Held – Rules of 1973 do not apply to a substantively appointed Revenue Sub-Inspector (petitioner) even if he holds the officiating charge of higher post of CMO – Rules of 1973 do not govern the service condition of Revenue Sub-Inspector – Single Judge rightly quashed the charge-sheet issued to respondent by Additional Director, Urban Administration holding it as an incompetent authority – Appeal dismissed: *State of M.P. Vs. Pradeep Kumar Sharma, I.L.R. (2020) M.P. 1066 (DB)*

– Schedule 2, Entry No. 10 – See – Service Law: *Shivlal Jhariya Vs. State of M.P., I.L.R. (2019) M.P. 1014*

MUNICIPALITIES ACT, M.P. (37 OF 1961)

– Section 19(1)(c) – See – Municipal Corporation Act, M.P., 1956, Section 9(1)(c): *Vinayak Parihar Vs. State of M.P., I.L.R. (2018) M.P. 1101 (DB)*

– Sections 20, 21, 22 & 47 and Constitution – Article 226 & 243-ZG – Maintainability of Petition – Remedy of Election Petition – Held – Petitioner may have opportunity to challenge the process of recall after notification of Election Commission but he has no remedy in the statute to challenge the circumstances which led to recall – Election petition not an effective remedy for challenging proceedings of Recall – Petitioner challenged the arbitrary exercise of powers by respondents and he cannot be rendered remedyless – Writ petition maintainable: *Geeta Suresh Chaudhary (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2929*

– Section 20(3) and Limitation Act (36 of 1963), Section 5 & 29 – Election Petition – Limitation – Condonation of Delay – Held – Election petition shall not be admitted unless it is filed within 30 days from date of publication of election result in gazette notification – Petition filed beyond such limitation as prescribed u/S 20(3) of the Act of 1961 deserves to be dismissed – In instant case, election was notified in gazette on 15.09.15 and election petition was filed on 15.10.15 alongwith application u/S 5 of the Act of 1963 whereby the trial Court condoned the delay and admitted the petition – Held – Supreme Court has concluded that provisions of Limitation Act has no application to an election petition presented u/S 20 of the Act of 1961 or under the Representation of Peoples Act – Trial Court erred in condoning the delay u/S 5 of the Act of 1963 – Impugned order set aside and election petition is dismissed – Petition allowed: *Sushila (Smt.) Vs. Rajesh Rajak, I.L.R. (2018) M.P. 1961*

– Section 20(3) and Municipalities (Election Petition) Rules, M.P., 1962, Rule 19(2) – Election Petition – Revision – Security Deposit – Held – The factum of deposit of security amount at the time of filing of revision before High Court has to be treated as mandatory condition and as the same was not fulfilled, revision is liable to be dismissed – Word "shall" used in Statute makes the compliance of deposit of security amount mandatory – Revision dismissed: *Radhika Shastri Vs. Smt. Sangeet, I.L.R. (2018) M.P. *95*

– Sections 20(3)(ii) & 26, Representation of the People Act (43 of 1951), Section 117 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Election petition – Deposit of election petition fee – Petitioner has deposited the security amount under the head No. 01-102 of the Sangh Tatha Rajyon Ke Mukhya Tatha Laghu Lekha Shirsho Ki Suchi which is related to the judicial stamps and is not under the head of the Government Treasury – Thus, the election petition was not accompanied with the receipt of security deposit, respondent no. 1 has failed to comply with the mandatory provisions of Section 20(3)(ii) of the Municipalities Act – Election Tribunal has committed an error in rejecting the application filed by the petitioner – Impugned orders are set aside – Election Petition dismissed – Revision allowed: *Kanchan Khattar (Smt.) Vs. Rakesh Dardwanshi, I.L.R. (2016) M.P. 1504*

– Section 32-C & 35 –Disqualification – Grounds – Election Expenditures – Appellant was disqualified from being elected as Municipal Councilor for a period of five years on the ground that he has not spent the amount (election expenses) through bank nor opened a bank account thereby violating the directions of Election Commission, although applicant has furnished election expenses – Held – Object and purpose of furnishing election expenses is to ensure that there is transparent form of election and money power is not used to change result of election – Condition of opening bank account is not an essential condition, it is only a step to ensure proper maintenance of accounts – Opening bank account is only a procedure and can be taken as an ancillary condition – Non opening of bank account or not spending the election expenses through bank account, cannot be a ground to disqualify a candidate especially when election expenses have been furnished by the appellant and have not been commented adversely by the Commission – Further held, will of the people in electing a candidate cannot be set at naught on such mere technicalities – Production of Bank Register is not mandatory or essential condition – Further held – Disqualification for five years for not opening a bank account is wholly disproportionate to alleged misconduct – Removal or disqualification of elected representative has serious repercussion, thus they must not be removed unless a clear cut case is made out – Order of Election Commission and one passed by Single Bench is set aside – Writ appeal allowed: *Ajay Kumar Dohar Vs. State of M.P., I.L.R. (2018) M.P. 12 (DB)*

– Section 41 & 47 – Recall of President – Requirement – Held – Section 47 mandates the Collector to satisfy himself and verify that 3/4th Councillors submitted the proposal – Requirement of Section 47(1) have to be complied, it is only then, proposal can be forwarded to State Government – In present case, Collector on receiving the proposal, on the same date has drawn proceedings, statements were recorded and on the same date matter was referred to Government – Undue haste shown by Collector itself smacks malafide – Hurried pace of authority amounts to malafide – Proceedings set aside – Petition allowed: *Geeta Suresh Chaudhary (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2929*

– Section 41-A – Municipal Council – Public Representative/Authority – Duties – Held – Public representatives are holding public money and cannot use the same on their own whims and fancies – They hold the chair of public office which is founded on Public Trust and Democratic Accountability – Act of petitioner amounts to pilferage to public money and advancing spoil system – Act was contrary to public interest rather defeated it: *Satyaprakashi Parsedia (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2722*

– Section 41-A – Municipal Council – Removal of President – Grounds – Principles of Natural Justice – Held – Petitioner appointed 24 pump operators on her own and of her choice – She committed misconduct and repeated illegality while making such back door appointments and raising their salary without any legal sanction – President of Municipal Council or head of any Local Self Body cannot appoint any employee in Council circumventing the procedure and rules provided thereto – Impugned order passed after giving sufficient opportunity of hearing – Act of petitioner was contrary to law of the land and to public interest – Rightly removed from post u/S 41-A of the Act of 1961 – Petition dismissed: *Satyaprakashi Parsedia (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2722*

– Section 41-A – Municipal Council – Resolution – Vicarious Liability – Held – Two wrongs cannot make one right, therefore petitioner cannot take shelter of vicarious liability for passing of resolution: *Satyaprakashi Parsedia (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2722*

– Section 41-A & 51-A, Municipal Account Rules, M.P., 1971, Rule 152 and Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Functions of the Authorities) Rules, M.P., 1998, Rule 6 – Removal of President – Grounds – Petitioner, President of Municipal Council removed for monetary irregularities – Held – President alone cannot be singled out or held responsible individually for the collective decision taken by Council/Tender Committee – Alleged irregularities are procedural in nature and are not so grave or serious to show abuse of power, which warrants drastic action u/S 41-A(2) of the Act – Impugned

order set aside – Petition allowed: *Preeti Swapnil Agarwal Vs. State of M.P., I.L.R. (2020) M.P. 364*

– Section 47 – Recall of President – Proper Party – Proposal for recall of president rejected by Collector, which is challenged in present petition – Petitioners seeking quashment of order passed in favour of president – Right has been created in favour of president and he has not been made a party to present petition – Petition liable to be dismissed on this ground alone: *Basant Shravanekar Vs. State of M.P., I.L.R. (2020) M.P. 1116*

– Section 47 – Recall of President – Proposal – Verification of Signatures – Held – Out of 15 Councilors, only 10 present for verification of signatures/identity – For remaining Councilors, application for adjournment filed by their counsel, same being not supported by any affidavit or documentary evidence – No provision u/S 47 for appearance of Councillor through a counsel – Collector rightly turned down the proposal as not supported by 3/4th councilors – Petition dismissed: *Basant Shravanekar Vs. State of M.P., I.L.R. (2020) M.P. 1116*

– Section 47 – Recall of President – Satisfaction – 12 out of 15 elected councillors presented themselves before Collector with a signed proposal to recall – Collector after verifying that half of the period of tenure has expired forwarded the proposal to State Govt. – Non-mention of word "satisfying" will not belie the existence of facts leading to forwarding of proposal to State Govt. – Petition dismissed: *Kamal Kant Bharadwaj Vs. State of M.P., I.L.R. (2016) M.P. 48*

– Sections 47, 331 & 332 – Recall of President – Revision & Review – Held – Rejection of proposal u/S 47 by Collector is final in nature – Petitioner ought to have availed the remedy of revision but since they have given up their right of revision, approached this Court and argued the matter on merits, they cannot be relegated to revisional authority: *Basant Shravanekar Vs. State of M.P., I.L.R. (2020) M.P. 1116*

– Sections 55 & 56 – Convening meeting of council – Ordinary or special meeting – Date of every meeting shall be fixed by the specified Authority – It is a general enabling provision, but it makes exception of the first meeting after general election which is to be fixed by the Chief Municipal Officer with the approval of the prescribed Authority within specified time: *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943 (FB)*

– Sections 55 & 56(3) and Municipalities (Election of Vice-President) Rules, M.P. 1998, Rule 3(3) – Issuance of the Notice – Notice is required to be despatched to every councillor and exhibited at the Municipal Office – Notice must be despatched "Seven clear days" before an ordinary meeting and three clear days before a special meeting: *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943 (FB)*

– Section 70 and Municipal Employees (Recruitment and Conditions of Service) Rules, M.P. 1968, Rule 51 – Held – Mayor-in-Council is appointing authority of petitioner – Additional Director/Additional Commissioner, Urban Administration is not vested with any power under Act of 1961 nor is a superior/controlling authority for post of Revenue Sub-Inspector (petitioner) enabling it to initiate disciplinary proceedings – Charge-sheet issued was bereft of jurisdiction: *State of M.P. Vs. Pradeep Kumar Sharma, I.L.R. (2020) M.P. 1066 (DB)*

– Section 94 – See – Criminal Procedure Code, 1973, Section 197: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Section 109 – Disposal of Municipal Property – Allotment on Lease – Held – Municipal Council invited tenders without prior approval of State Government as required u/S 109 – Further, Commissioner rightly pointed out infirmities in proposal and advised the Government to reject the same with a direction to Municipal Council to invite fresh tenders – Commissioner and State Government have acted in larger public interest which would ensure a higher revenue by enlarging the scope of competition, which cannot be termed as arbitrary, illegal or irrational – Interference of High Court was improper – Impugned order set aside – Appeal allowed: *Municipal Council Neemuch Vs. Mahadeo Real Estate, I.L.R. (2020) M.P. 278 (SC)*

– Section 109 & 335 and Settlement of Land Located Within Cantonment Area under Municipal Council Neemuch Rules, 2017 – Dispute of Title – Constitutional Validity of Rules – State Government introduced Rules of 2017 whereby occupants of land in cantonment area were asked to file applications before Municipal Council for settlement of their cases and if such applications are not preferred, Council will take action under M.P. Lok Parisar (Bedakhali) Adhiniyam, 1974 – Challenge to – Plea of ownership by petitioners – Held – Historical facts establishes that ownership of Cantonment land area was transferred to Municipal Council, Neemuch – No document on record to show that at any time in past, the British Government or Scindia Dynasty or any other titleholders had ever transferred the title to the predecessor-in-title of petitioners – Earlier also, while disposing a Second Appeal, this Court has held that land in Cantonment area Neemuch is vested in Municipality – Further held – Grounds raised by petitioners do not fall within the parameters framed by Apex Court in (2016) 7 SCC 703 – Rules of 2017 cannot be termed as Ultra Vires – Petitions dismissed: *Mohanlal Garg Vs. State of M.P., I.L.R. (2018) M.P. 1631 (DB)*

– Section 318 – Indemnity for Acts Done in Good Faith – Demolition of Encroachment – Notice of encroachment refused by plaintiff which was later served by affixture – Plaintiff did not remove the encroachments thus same was demolished by Municipal authorities – Held – Suit for damages is not maintainable even in a

situation where Municipal Committee or its officers had intended to perform any act under the Act, Rule or Bye-Laws – Case covered under the phrase "intended to be done under this Act" – Concerned Officer is entitled for protection u/S 318 of the Act – Suit is not maintainable and is barred – Revision allowed: *Mahesh Kumar Agarwal Vs. State of M.P., I.L.R. (2019) M.P. 1770*

– Section 318 & 319 – Scope – Held – Protection given u/S 318 is not dependent on provisions of Section 319 of the Act of 1961 – Both Sections are independent to each other dealing with different situations: *Mahesh Kumar Agarwal Vs. State of M.P., I.L.R. (2019) M.P. 1770*

– Section 319 – Notice – Applicability of Provision – Held – Suit is for declaration of title and protection of possession – No action under Act of 1961 has been challenged – Provision of Section 319 of the Act of 1961 not attracted, thus no requirement of notice thereunder: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

– Section 323 – Suspension of Resolution – Show Cause Notice – Opportunity of Hearing – Principle of Natural Justice – Held – Recruitment/appointments made vide resolution passed by President-in-Council of Municipal Council – On certain complaints regarding irregularities in recruitment process, Collector suspended the resolution without affording any opportunity of hearing to petitioners who were appointed vide recruitment process – Challenge to – Held – Substantive right created in favour of petitioners – Although it is not provided in Section 323, but before passing any adverse order against them, natural justice require that an opportunity of hearing be given to petitioners – Impugned order quashed – Petition allowed: *Hemlal Kol Vs. State of M.P., I.L.R. (2018) M.P. *82*

– Section 326 – Enquiry – Show Cause Notice – Held – Respondents conducted preliminary enquiry behind the back of petitioner and found him guilty – Contents of show cause notice reveals that it was mere formality and was issued without any authority of law and not even mentioning that under which provision of law, the same was issued – Petitioner cannot be held guilty on basis of such enquiry – Notice set aside – Petition allowed: *Rakesh Soni Vs. State of M.P., I.L.R. (2020) M.P. 126*

MUNICIPALITIES (ELECTION OF VICE-PRESIDENT) RULES, M.P., 1998

– Rule 3(3) – See – Municipalities Act, M.P., 1961, Sections 55 & 56(3): *Farooq Mohammad Vs. State of M.P., I.L.R. (2016) M.P. 943 (FB)*

– Rule 3(3) – Seven Days Notice Period – Non-Compliance of Provision – Effect – Held – Petitioner participated in the meeting, thus has waived the condition as provided under Rule 3(3) of the Rules of 1998 – Non-compliance of such mandatory provision of dispatching seven days clear prior notice, has not caused any prejudice to petitioner who actually participated in election and lost the same – No irregularity nor illegality – Appeal dismissed: *Ruksana Patel Vs. State of M.P., I.L.R. (2019) M.P. 1213 (DB)*

MUNICIPALITIES (ELECTION PETITION) RULES, M.P., 1962

– Rule 19(2) – See – Municipalities Act, M.P., 1961, Section 20(3): *Radhika Shastri Vs. Smt. Sangeet, I.L.R. (2018) M.P. *95*

MUNICIPALITIES (THE CONDUCT OF BUSINESS OF THE MAYOR-IN-COUNCIL/ PRESIDENT-IN-COUNCIL AND THE POWERS AND FUNCTIONS OF THE AUTHORITIES) RULES, M.P., 1998

– Rule 6 – See – Municipalities Act, M.P., 1961, Section 41-A & 51-A: *Preeti Swapnil Agarwal Vs. State of M.P., I.L.R. (2020) M.P. 364*

MUNICIPALITY (DETERMINATION OF ANNUAL LETTING VALUE OF BUILDING/LANDS) RULES, M.P. 1997

– Rule 10(1) – See – Municipal Corporation Act, M.P., 1956, Section 136: *Essarjee Education Society Vs. State of M.P., I.L.R. (2016) M.P. 2982 (DB)*

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT (25 OF 1986)

– Section 3 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Amount of Maintenance – Quantum – Trial Court directed husband to pay Rs. 5 lacs to wife as lumpsum maintenance alongwith Rs. 51,000 towards amount of Mahr – In revision, the same was upheld by the Revisional Court – Held – It is not disputed that husband use to work at Dubai and he was a sales person, hence his potentiality of earning cannot be doubted – Finding of fact recorded by the Courts below do not warrant interference u/S 482 Cr.P.C. – Petition dismissed with cost of Rs. 10,000, which shall be paid to wife: *Syed Parvez Ali Vs. Smt. Nahila Akhtar, I.L.R. (2017) M.P. 1776*

– Section 3 and Mohammedan Law, Clause 311 & 312 – Maintenance – Entitlement – "Divorced Women" – Mode of Talak – "Talak ahsan" - Wife filed application u/S 3 of the Act of 1986 against husband before the JMFC – Magistrate allowed the application holding the wife to be a divorced woman – Husband filed revision whereby the same was dismissed – Challenge to – Husband submitted that he communicated and pronounced Talak once, which is revocable and is not complete Talak and hence wife is not a divorced woman – Held – As per Mohammedan Law, such single pronouncement falls under clause 311(1) "Talak ahsan" which is revocable under Clause 312(1) – "Talak ahsan" becomes irrevocable and complete on expiration of iddat period until husband resumes sexual intercourse during period of iddat to make it revocable by express or implied act – In the present case, husband has not taken any plea in written statement that adopting a mode specified in Clause 312(1) and substantiating by evidence, talak was revoked by him – Wife is a "Divorced Woman" and her application u/S 3 of the Act of 1986 is maintainable – Trial Court rightly allowed the application – Petition dismissed: *Syed Parvez Ali Vs. Smt. Nahila Akhtar, I.L.R. (2017) M.P. 1776*

MUTATION

– Necessary Party – Held – R-6 maintained a long and beautiful silence for 16 yrs. after partition proceedings had taken place, as a result of which third party rights have been created in favour of petitioner company who purchased the land and raised a residential colony and sold to various persons – R-6 filing appeal without impleading the petitioner company is not sustainable – Petitioner company (subsequent purchaser) is a necessary party – Impugned orders set aside – Petition disposed: *GLR Real Estate Pvt. Ltd. Vs. State of M.P., I.L.R. (2019) M.P. *48*

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NAGAR PALIKA (INSTALLATION OF TEMPORARY TOWER/STRUCTURE FOR CELLULAR MOBILE PHONE SERVICE) RULES, M.P., 2012

– Telegraph Act, (13 of 1885), Section 4 and Indian Telegraph Right of Way Rules, 2016 – "Request for Proposal" (RFP) & Right of Way (ROW) – Scope & Applicability – Held – Grant of concession under RFP does not violate Section 4 of the Act of 1885 or the provisions of licenses issued by Telecom Department, Government of India – It do not cast any mandatory obligation to grant ROW to all licensees but only to permit them to provide their services subject to reasonable conditions – RFP rather specifically preserves the existing ROW of infrastructures

providers/service providers – Telegraph Act or ROW Rules cannot be construed as conferring any absolute right upon licensee to claim non-exclusive ROW: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

NAGAR PALIKA (REGISTRATION OF COLONIZER TERMS & CONDITIONS) RULES, M.P., 1998

– Rules 10(4), 10(13)(i)(ii) & (iii) & 12(iv) – See – Municipal Corporation Act, 1956, Section 292: *Divine City Pvt. Ltd. Vs. State of M.P., I.L.R. (2019) M.P. *30*

NAGAR SUDHAR NYAS (NIRSAN) ADHINIYAM (22 OF 1994)

– Section 3 – See – Town Improvement Trust Act, (M.P.) 1960, Section 72(2): *Arvind Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 1623 (DB)*

NAGAR TATHA GRAM NIVESH ADHINIYAM, M.P. (23 OF 1973)

– Section 2(j) – See – Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 3 & 5: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Section 19 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013) – Bhopal Development Plan 2005, Chapter 3 – Smart City Guidelines – Adverse Possession Against State – Held – Occupants claiming their title over the government land on the ground of adverse possession – State, being the owner of the land in question will not acquire its own land – Petitioners are unauthorized occupants over such land and therefore cannot claim to be interested persons in the event of acquisition of land – No person is entitled to take a plea of adverse possession as an affirmative action and also can't seek declaration to the effect that such adverse possession has matured into ownership – Hostile possession against the State as an owner cannot be simplicitor on account of long possession – Further held – Respondents are well within jurisdiction to construct the road upto the width of 30 meters, which is in accordance with Bhopal Development Plan 2005 – Petition dismissed: *Munawwar Ali Vs. Union of India, I.L.R. (2018) M.P. 449 (DB)*

– Section 24 & 74 and Bhumi Vikas Rules, M.P., 1984-2012, Rule 103 and Indore Development Plan, 2021 – High Rise Buildings – Permissions – Challenge to – Held – Provisions of Development Plan gets precedence and provisions of Bhumi

Vikas Rules are treated as deemed to have been modified mutatis mutandis in so far as their application to that planned area is concerned – Development Plan supercedes and have an overriding effect on the Bhumi Vikas Rules – Permissions were granted keeping in view the Development Plan, 2021, framed in consonance with UDPFI guidelines issued by Government of India, thus no violation of any statutory provisions of law – Petition based on grave misconception – No case for interference made out – PIL filed with oblique and ulterior motive – Petition dismissed: *Pradeep Hinduja Vs. State of M.P., I.L.R. (2019) M.P. 339 (DB)*

– Section 30 and Municipal (Compounding of Offence of Construction of Buildings, fees and Conditions) Rules, (M.P.) 2016, Rule 3 & 5 – Construction Without Permission in Unauthorized Colony – Held – In case the construction is being raised by the petitioner in an unauthorized colony, without permission, the application for compounding is maintainable – Argument of respondent State that because the colony has not been approved under the provisions of Adhiniyam of 1973 and Rules and bye laws made thereunder it, is totally misplaced: *Ramesh Verma Vs. Indore Municipal Corporation, I.L.R. (2018) M.P. 1127*

– Sections 30, 31, 32 & 33 – Lapse of Permission – Held – Permission granted shall be valid for 3 years and can be extended from year to year basis, but such extension shall not exceed five years: *Sanjay Gangrade Vs. State of M.P., I.L.R. (2019) M.P. 1227 (DB)*

– Section 30 A – Merger of Residential Plot – Held – Section 30 A does not empower the authority for merger of plots, meant for residential purposes, to be used for commercial purposes – After merger of residential plots, Hotel has been constructed – Building permission granted after merger of plots was certainly illegal, which was rightly revoked by Municipal Corporation: *Sanjay Gangrade Vs. State of M.P., I.L.R. (2019) M.P. 1227 (DB)*

– Section 50(7) & 56 – Acquisition of Land – Held – As per Section 56, G.D.A. after 3 years from date of publication of Scheme could not have acquired the land by entering into agreement with owners – After 3 years of publication of notification u/S 50(7), land can only be acquired by State Govt. under provisions of Land Acquisition Act – Officers of G.D.A acted contrary to provisions of Section 56: *Ekkisvi Sadi Grah Nirman Sehkari Samiti Vs. State of M.P., I.L.R. (2020) M.P. *17*

– Section 56 – Acquisition of land under the provisions of 1973 Act – Procedure – Held – If the "acquisition of land" is resorted to in respect of matters covered by the Act of 1973, procedure specified therefor, in the Act of 1973 read with the Central enactment dealing with determination of compensation amount will have to be observed: *Municipal Corporation, Bhopal Vs. Prem Narayan Patidar, I.L.R. (2016) M.P. 2938 (DB)*

– Section 56 – Held – In connivance with officers of G.D.A., poor persons who were original owners of land were cheated and undue advantage has been given to the petitioner society – Lokayukt directed to register FIR and investigate the matter – Petition disposed of: *Ekkisvi Sadi Grah Nirman Sehkari Samiti Vs. State of M.P., I.L.R. (2020) M.P. *17*

– and Bhumi Vikas Rules, M.P, 1984, Rule 49 – Change in Layout Plan – Validity – Held – Change or modification is permitted under the Act provided the same is in accordance with law and satisfies the development norms and conditions of development plans, zonal plans and town planning schemes – High Court misconstrued and misdirected itself by applying principle of estoppels to hold that once layout plan is prepared, same cannot be modified or changed – Modification of layout plan upheld but appellant directed to ensure that the area/land earmarked for primary school and park/garden are not converted into residential plots – Appeal allowed: *M.P. Housing & Infrastructure Development Board Vs. Vijay Bodana, I.L.R. (2020) M.P. 1522 (SC)*

NAGAR TATHA GRAM NIVESH VIKASIT BHUMIYON, GRIHO, BHAVANO TATHA ANYA SANRACHNAO KA VYAYAN NIYAM, M.P., 1975

– Rule 3 & 5, Town Improvement Trust Act, 1960 (14 of 1961), Section 52 & 87(c)(iii), Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 2(j) and Revenue Book Circulars – Nazul Land/Authority Land – Sanction of State Government – Held – Nazul Land, unless notified, does not automatically gets vested in any Authority or Trust – No transfer or disposal of Nazul/Authority land is permissible without prior approval of State Government as mandated in Rule 3/5 of Rules of 1975 – Petitioner failed to show any such notification whereby character of land has been changed from Nazul/Government land to Authority land – As per 1975 Niyam, no transfer through promoter agreement is permissible – State and JDA were bound to act according to statutory rules – JDA violated provisions of 1975 Niyam and Prakoshta Adhiniyam – It amount to "malice in law": *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Rule 5-A – Tenant/ Sub Lessees – Public Interest – Held – Petitioner admittedly given shops/ offices/showroom on rent but possession was not given to tenants by joint signatures of JDA and promoter which was contrary to promoter agreement read with scheme of Prakoshta Adhiniyam – For every transfer of apartment, JDA was entitled to receive 3% of Collector guideline rate of property – JDA was deprived of its benefits and also the amount of rent by putting sub-lessees and licensees – Action is not only against JDA but also against public interest –

Impugned orders rightly passed: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Rule 12 & 13 – Powers of Authority – Held – Even assuming that under Rules of 1975, power vest with authority to cancel the highest bid, said Rules provides obligation upon authority to record reason for doing so and if it is not done, it will be deemed that authority has violated the provision and misused the power provided by Statute: *Deepak Sharma Vs. Jabalpur Development Authority, I.L.R. (2020) M.P. 377*

– Rule 27(b) – Allotment of Additional Land – Held – Precondition of applicability of clause (b) was that largest plot is already held by a person who is claiming the adjoining plot – On the date (19.05.2008), High Rise Committee meeting had taken place, petitioner was not holding any such largest plot of land, thus there was no occasion for Committee to recommend grant of additional land – Since the grant of largest plot to petitioner vide lease deed dated 30.05.2008 stood cancelled, very foundation of allotment of additional land became non-existent automatically: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

NAGARIYA KSHETRO KE BHOOMIHIN VYAKTI (PATTADHRITI ADHIKARON KA PRADAN KIYA JANA) ADHINIYAM, M.P. (15 OF 1984)

– Section 3 – Aims and Objects – Held – Act of 1984 was enacted to settle land in favour of landless persons in any urban area – Cut-off date has been extended from time to time in terms of Section 3 of the Act of 1984 – Leasehold rights conferred u/S 3(3) are not transferable by sub-lease, sale, gift or mortgage or by any other manner except by way of inheritance: *Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P., I.L.R. (2017) M.P. 1043 (DB)*

– Section 3 and Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Rules (M.P.) 1998, Rule 7 – Cancellation of Patta – Alternate Accommodation – House of the appellant was coming in alignment of LIG link road – Patta given to the father of appellant was cancelled and for the purpose of resettlement, appellants were allotted a flat in a different location – Challenge to – Held – As per clause 4 of the allotment letter, if land is required in public interest, then pattedar will be relocated – In the instant case, appellants seeking allotment of plot of 2000 Sqfts with construction of double storied house for them – As a 'settled person' on a 'public land', they have a right for alternative accommodation but not as per the size and in the area desired by the appellant – Alternate accommodation is to provide shelter over the head of the settlers but not to provide a source of income or

an investment for settlers – Further held – Allotment of patta was made in 1998 in favour of appellant's father and wife and cannot be said to be an honest act of allotment of settlement of his near relations – Family of appellant no.1 does not appears to fall in category of 'landless persons' and 'urban poor' – Allotment lacking in bonafides – Process adopted by appellants for allotment of alternate accommodation is not fair and reasonable – Appeal dismissed: *Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P., I.L.R. (2017) M.P. 1043 (DB)*

NAGARIYA KSHETRO KE BHOOMIHIN VYAKTI (PATTADHRITI ADHIKARON KA PRADAN KIYA JANA) RULES, M.P., 1998

– Rule 7 – See – Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, M.P., 1984, Section 3: *Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P., I.L.R. (2017) M.P. 1043 (DB)*

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (61 OF 1985)

SYNOPSIS

1. Appreciation of Evidence

– Sections 8/21 – Facts – Secret information – Appellant having smack in his possession and waiting on railway platform to board Dehradoon Express – Information was reduced into writing and 'Panchnama' was prepared – Superior officer was informed before proceeding – A.S.I. alongwith three constables and two 'Hammals' proceeded to the spot – As per Section 50 of the Narcotic Drugs and

Psychotropic Substances Act search was carried out – 100 gm. of contraband smack was seized – F.I.R. was registered – F.S.L. report positive – Charge sheet filed – Trial – Conviction and sentence – Appeal against – Held – The prosecution has examined two police witnesses but no independent witness has been examined – Two panch witnesses PW-1 and PW-2 turned hostile and rest of the witnesses are formal witness, so there is no other material to support the two prosecution witnesses – Except for 'Hammals' i.e. PW-1 and PW-2, no one else was available to the prosecution as independent witness – Prosecution case does not inspire confidence – Judgment of conviction and sentence set aside – Appeal allowed: *Shabbir Vs. State of M.P., I.L.R. (2016) M.P. *43 (DB)*

– Section 8/21 – Malkhana Register – Evidence – Held – As per prosecution, seized brown sugar was kept in Malkhana – During the trial, Malkhana Register was not marked as Exhibit, neither statement of any witness in respect of the same has been brought on record nor has been examined during trial – No evidence that alleged seized article was kept in Malkhana or in safe custody – Benefit has to be given to appellant: *Shyam Bihari Vs. State of M.P., I.L.R. (2018) M.P. 755*

– Section 20 – Applicability – Weight of Seized Article – Discrepancy – Effect – Held – Supreme Court has concluded that discrepancy as to weight of recovered contraband u/S 20 of the Act of 1985 is inconsequential – Hence, such discrepancies is not fatal and would not vitiate the entire prosecution: Dinesh Singh *@ Dinnu @ Rajesh Singh Vs. State of M.P., I.L.R. (2018) M.P. 2486 (DB)*

– Section 21(a) and Criminal Procedure Code, 1973 (2 of 1974), Section 293 – FSL Report – Admissibility in Evidence – Held – FSL report not marked as Exhibit by trial Court, but the same is admissible in evidence u/S 293 of the Code – Further, u/S 313 Cr.P.C., a question was put to appellant regarding FSL report and thus report can be read in evidence: *Ballu Savita Vs. State of M.P., I.L.R. (2020) M.P. *6*

2. Bail/Grounds

– Section 8/20 & 36(A)(4) and Criminal Procedure Code, 1973 (2 of 1974), Section 167(2) – Bail – Held – Magistrate rejected the application u/S 167(2) Cr.P.C. on 28.05.2019 and thereafter challan has been filed on 09.06.2019 – Since challan is filed beyond the period of 60 days, therefore right u/S 167(2) Cr.P.C. is not to be treated as extinguished or frustrated – Impugned order quashed – Applicants directed to be released on bail – Revision allowed: *Jitendra Vs. State of M.P., I.L.R. (2019) M.P. 2121*

– Section 8/21 & 37 and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Grounds – Quantity of Psychotropic Substance – Calculation of – Held – Government of India vide notification dated 18.11.2009 made it clear that for purpose

of determining quantity, gross weight of the drug recovered and not the pure content of psychotropic substance shall be taken into consideration – In present case, even if net quantity is considered, total quantity of seized "Codeine" is 1.993 Kg which is commercial quantity which was kept in possession without any document to show that it was meant for therapeutic use – Restrictions u/S 37 of the Act of 1985 is applicable – Petitioners not entitled for bail – Applications dismissed: *Ranjan Vs. State of M.P., I.L.R. (2019) M.P. 230*

– Section 37 – "Reasonable grounds" – Has not been defined in the Act but means something more than prima facie grounds – It connotes substantial probable causes for believing accused not guilty of offence charged – Reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of alleged offence – Recording of satisfaction on both aspects is sine qua non for granting of bail under NDPS Act: *Jagdish Vs. State of M.P., I.L.R. (2017) M.P. 684*

– Section 37 & Constitution – Article 142 – Binding effect of order passed u/A 142 – Hon'ble Supreme Court may grant release on bail or suspension of sentence without getting itself satisfied with requirements of Section 37 for doing complete justice – Such authority is not available to High Court or trial Court – Order passed in authority exercised by Supreme Court under Article 142, is not having binding effect or a precedent for the High Court or other subordinate Courts: *Jagdish Vs. State of M.P., I.L.R. (2017) M.P. 684*

– Section 8/21 – See – Criminal Procedure Code, 1973, Section 439: *Rahul Yadav Vs. State of M.P., I.L.R. (2018) M.P. *74*

– Sections 8/22, 29, 36-A(3) & 37 – See – Criminal Procedure Code, 1973, Section 438: *Ravi Jain Vs. Central Bureau of Narcotics, I.L.R. (2017) M.P. *121*

3. Commercial Quantity/Period of Filing Challan

– Section 2(vii-a) & 36(A)(4) and Central Government Notification, 2001 – Commercial Quantity – Period of Filing Challan – Held – In present case, 20 kgs of 'ganja' seized – Commercial quantity would be any quantity greater than the quantity specified by Central Government Notification, which is specified as 20 Kgs for 'ganja' – Thus, commercial quantity for 'ganja' would be more than 20 kgs and not 20 kgs – If more than 20 kgs would have been seized, then period of filing challan would have been 180 days: *Jitendra Vs. State of M.P., I.L.R. (2019) M.P. 2121*

4. Enhancement of Sentence/Previous Conviction

– Section 8/20(b)(ii)(B) & 31, Criminal Procedure Code, 1973 (2 of 1974), Section 211(7) & 298 and Rules and Orders (Criminal), M.P., Rule 175 to 179 –

Previous Conviction – Enhancement of Sentence – Framing of Charge – Sentence enhanced due to previous conviction – Held – To enhance the sentence due to previous conviction, it was incumbent on the Court to frame charge u/S 31 of the Act stating date and place of previous offence and details of previous conviction and afford an opportunity to accused to defend himself alongwith following procedure prescribed in Section 211(7) & 298 Cr.P.C. and in Rules 175 to 179 of M.P. Rules and Orders (Criminal) – Further held – Such charge may be added at any time before sentence is passed – Procedure not followed in present case – Enhanced sentence awarded is set aside – Appeal partly allowed: *Madhav Prasad @ Maddu Gupta Vs. State of M.P., I.L.R. (2018) M.P. 2494 (DB)*

5. Exclusive & Conscious Possession

– Sections 8/15(C), 42, 50 & 57 – Conviction and Quantum of Sentence – Testimony of Witnesses – Exclusive and Conscious Possession – 450 Kgs of poppy straw was seized from corridor/verranda of the house of appellant – Held – As per land records, house is recorded in the name of appellant – Secretary of Gram Panchayat stated on oath that the house alongwith verranda from where contraband was recovered belongs to and is in possession of appellant – It is proved that contraband was recovered from exclusive and conscious possession of appellant – Compliance u/S 42 and 57 is duly established – Despite elaborate cross-examination, no material infirmity in prosecution witnesses – Further held – Sentence imposed is on higher side, hence sentence of 15 years RI is reduced to 12 years RI – Revision partly allowed: *Badri Singh Vs. State of M.P., I.L.R. (2017) M.P. 1952 (DB)*

– Section 8/18 & 54 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Conviction – Exclusive and Conscious Possession – 8.7 Kgs of opium was seized from the house of appellant – Held – Certificate of Gram Panchayat shows that house in question belongs to father of appellant and there were other persons also residing in the same house – Electricity bill also in the name of the father of appellant – House from where contraband was recovered does not exclusively belongs to and is in possession of appellant – It is proved that contraband was not recovered from exclusive and conscious possession of appellant – Further held – Essence of accusation has to be brought to the notice of accused while examining him u/S 313 Cr.P.C. but in the instant case, no question of acquisition was asked to the accused in his examination u/S 313 Cr.P.C. – Benefit of doubt granted to appellant – Conviction set aside – Appeal allowed: *Rameshwar Vs. State of M.P., I.L.R. (2018) M.P. *47*

– Section 8/18 (b) – Appellant who is pillion rider cannot be said in conscious possession of alleged contraband – He is not owner of motorcycle – No specific evidence to show he had knowledge of the contraband kept in motorcycle – Not

clear as to from which place he took lift on the motorcycle – Conviction & sentence set aside: *Ghanshyam Vs. State of M.P., I.L.R. (2016) M.P. 3350*

– Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Appreciation of Evidence – Held – Appellant identified the house and was panch witness to breaking of lock and recovery of contraband – As per normal human prudence, why he would identify his own erstwhile house as that of co-accused to implicate himself – No explanation by prosecution why they have not investigated the agreement of sale of house – Prosecution failed to establish conscious possession: *Gangadhar @ Gangaram Vs. State of M.P., I.L.R. (2020) M.P. 1989 (SC)*

– Section 8(C) & 20(b)(ii)(c) – Conscious Possession – Presumption – Held – Appellant held guilty being owner of house (as per voter list of 2008) from where Ganja recovered – Witness (Investigation Officer) admitted that on very next day, appellant produced sale agreement showing that in 2009 (before registration of offence) he sold the said house to co-accused but neither agreement nor panchayat records were ever investigated – Prosecution failed to establish conscious possession of house with appellant to attribute presumption against him – Poor investigation by police and gross mis-appreciation of evidence by Courts below – Conviction being unsustainable is set aside – Appeal allowed: *Gangadhar @ Gangaram Vs. State of M.P., I.L.R. (2020) M.P. 1989 (SC)*

6. Investigation/ Practice & Procedure

– Section 8(C) & 20(b)(ii)(B) – Investigation – Procedure – Held – Sub-Inspector not only lodged the FIR but had also carried out entire investigation including all procedural formalities – Apex Court concluded that such practice creates occasion to suspect fair and impartial investigation – Applying dictum of Apex Court in present case, rights of appellant has violated by action of the over zealous Investigating Officer who has taken upon himself to lodge the FIR and to carry out the entire investigation as well, which cannot be sustained – Conviction set aside – Appeal allowed: *Motilal Daheriya Vs. State of M.P., I.L.R. (2019) M.P. *8*

7. Quantum of Sentence/Fine

– Section 8/18(b) – Sentence & Fine – Quantum – Held – In default of payment of fine of Rs. 1 lacs, appellant has to undergo 2 years of rigorous imprisonment – In view of the fact that, it is the first offence of appellant, 2 years rigorous imprisonment is reduced to 2 months rigorous imprisonment: *Abdul Sattar Vs. State of M.P., I.L.R. (2019) M.P. 1726*

– Sections 8/20 (C), 42, 50 & 57 – Conviction and Quantum of Sentence – Appellant was convicted for offence u/S 8/20 (C) of the Act of 1985 and was sentenced

to 15 years RI alongwith a fine of Rs. 1,50,000 – Challenge to – Held – As the search/seizure was made at a public place (bus stand), therefore Section 42 is not attracted – Section 50 is applicable in case of 'search of a person' and does not extend to search of a vehicle or a container or a bag or premises – In the instant case, cannabis (ganja) was recovered from gunny bags carried by appellant and therefore no personal search was in question, thus it cannot be said that there was a non-compliance of Section 50 of the Act of 1985 – Sufficient corroboration of evidence regarding compliance of Section 57 of the Act – Substances recovered from possession of appellant was cannabis (ganja), has been duly proved by testimony of Doctor and he, being an expert, his conclusion carries weight and in absence of any material anomaly deserves to be accepted – Trial Court rightly convicted the appellant – Further held – Considering the quantity of contraband (24 kgs) recovered from possession of appellant, sentence imposed appears to be disproportionate and on higher side – Sentence reduced from 15 years RI to 10 years RI and fine amount reduced from Rs. 1,50,000 to 1,00,000 – Appeal partly allowed: *Mohd. Nayan Choudhary Vs. State of M.P., I.L.R. (2017) M.P. 1191 (DB)*

8. Search & Seizure/Complaince U/s 50

– Section 8/18(b) & 50(1) – Search & Seizure – Mandatory Requirement – Held – In terms of Section 50(1), suspect was informed regarding existence of his legal right to be searched before nearest gazetted officer or nearest Magistrate – However, accused gave consent in writing to be searched by raiding party and not by gazetted officer or Magistrate – Search and recovery was in accordance with law – Signatures on documents not rebutted by accused – Conviction and sentence maintained – Appeal partly allowed: *Abdul Sattar Vs. State of M.P., I.L.R. (2019) M.P. 1726*

– Sections 8/21, 42 & 50 – Conviction – Communication to Senior Officer – Search Procedure – Brown Sugar was seized from appellant – Held – Rojnamcha entry reveals that no communication was made to senior officers before search and seizure, therefore there was no compliance of Section 42 of the Act of 1985 – Further held – For the purpose of search, offer was give to appellant, to be searched by a Gazetted Officer or by the officer who went for the search – It was the officer who went for the search has searched the appellant, thus there was a total non-compliance of Section 50 of the Act of 1985 – In view of the above non-compliance, conviction deserves to be and is accordingly set aside – Appeal allowed: *Shyam Bihari Vs. State of M.P., I.L.R. (2018) M.P. 755*

– Sections 8/21(b), 42 & 50 – Compliance of Section 42 and 50 – Mandatory/ Substantial Compliance – Heroin was seized from appellant – Trial concluded and he was convicted for offence u/S 8 and 21(b) of the Act of 1985 – Held – It is clear that provisions of Section 42 and 50 of the Act of 1985 are mandatory

in nature, therefore exact and definite compliance and not only substantial compliance, is required – In the present case, mere grant of an option to accused to be searched either by Magistrate or a Gazetted Officer is not enough – He must be informed regarding such rights in clear and unambiguous terms – Evidence shows that such exercise was not conducted by any of the police officials – Evidence shows that accused was only informed about general terms of search and has not been informed about his right to be searched either by Magistrate or by a Gazetted Officer – Provisions of Section 50 was not definitely and exactly complied with – Prosecution failed to prove beyond reasonable doubt that accused was found in possession of heroin – Accused deserves the benefit of doubt – Conviction set aside – Appeal allowed: *Munna Khan Vs. State of M.P., I.L.R. (2018) M.P. 960*

– Section 42 – Applicability – Search & Seizure – Held – Supreme Court has concluded that provisions of Section 42 shall not apply when search and seizure of public conveyance have taken place in public place: *Dinesh Singh @ Dinnu @ Rajesh Singh Vs. State of M.P., I.L.R. (2018) M.P. 2486 (DB)*

– Sections 42, 50, 52, 52 A, 55 & 57 – Information received from secret source was recorded, memorandum was prepared and sent through special messenger to S.P. – Evidence of witnesses stands corroborated – Compliance of Section 42 well proved – Contraband was disposed of before Judicial Magistrate First Class and marked as article – Section 52 A duly complied – Contraband recovered from dicky of motorcycle, not from person of appellants – Section 50 of the Act not applicable – Seized contraband were duly sealed and were sent per messenger to FSL – As per FSL report, seal was found intact and contraband tested positive for opium 3.56% morphine – Section 55 duly complied – Detailed report with regard to seizure & arrest prepared and was sent on the same day to Additional SP – Corroborated by evidence of other witnesses – Compliance of Section 57 duly proved – Conviction maintained: *Ghanshyam Vs. State of M.P., I.L.R. (2016) M.P. 3350*

– Section 50 – Applicability – Search of Person – Held – Supreme Court has specifically concluded that in search of a bag/briefcase or any such article or container etc which is carried by accused, is not a search of person, hence Section 50 would not apply in such cases: *Dinesh Singh @ Dinnu @ Rajesh Singh Vs. State of M.P., I.L.R. (2018) M.P. 2486 (DB)*

– Section 50 – Compliance – Contraband was recovered from the verranda of the house of appellant and did not involve personal search of appellant hence, compliance u/S 50 of the Act of 1985 was not required: *Badri Singh Vs. State of M.P., I.L.R. (2017) M.P. 1952 (DB)*

– Sections 50(1), (2) & (3) – Search & Seizure – Mandatory Requirements – Discussed and explained: *Abdul Sattar Vs. State of M.P., I.L.R. (2019) M.P. 1726*

9. Suspension of Sentence

– Section 8/18(b) & 37 and Criminal Procedure Code, 1973 (2 of 1974), Section 389 – Suspension of sentence – Appellant convicted and sentenced for 10 years R.I. with fine of Rs. 1,00,000/- and in default of fine one year R.I. – Applicant seeking suspension of sentence on the ground that he suffered half of custodial sentence as awarded by the trial Court – Held – Applicant and co-accused known to each other and resident of same village – Both were riding on the motorcycle carrying opium in a bag hanging on the handle of motorcycle – Trial Court has observed that the applicant also had knowledge that co-accused was carrying opium in his bag – The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds – Conditions in Section 37 are cumulative in nature and not alternative – Thus, not appropriate to suspend sentence – Application for suspension dismissed: *Jagdish Vs. State of M.P., I.L.R. (2017) M.P. 684*

– Section 8(c) r/w 15 & 35 and Criminal Procedure Code, 1973 (2 of 1974), Section 389 – Conscious & Exclusive Possession – Appellant seeking suspension of sentence on the ground of period of detention – Held – Custody period alone cannot be made ground for bail/suspension in NDPS cases – Appellant was caught on spot and commercial quantity of poppy straw was found in his possession – Considering the conditions enumerated in Section 37 of the Act, it is not fit case to suspend sentence on the ground of period of detention or on merits as well – Application dismissed: *Mukesh Vs. State of M.P., I.L.R. (2017) M.P. 381*

10. Testimony of Police Officer

– Section 8/15(C) – Testimony of Police Officer – Credibility – Held – Law is well settled that testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer – If testimony of a police officer on due appreciation is found to be trustworthy and free from material contradictions and anomalies, conviction can be recorded on the basis of such evidence: *Badri Singh Vs. State of M.P., I.L.R. (2017) M.P. 1952 (DB)*

– Sections 8/20(b)(ii)(C), 42 & 50 and Arms Act (54 of 1959), Section 25(1)(a) – Conviction – Appreciation of Evidence – 903 Kgs of "Ganja" alongwith country made pistol recovered – As per evidence, mandatory provisions of Section 42, 50 and 52-A substantially complied with – Apex Court has concluded that if evidence of investigating officer who recovered material objects is convincing, evidence as to recovery need not be rejected on ground that seizure witnesses do not support prosecution version – Testimony of prosecution witnesses establishes the search and seizure and defence could not prove any strong reason to disbelieve the testimony of three police officers – Appeals dismissed: *Dinesh Singh @ Dinnu @ Rajesh Singh Vs. State of M.P., I.L.R. (2018) M.P. 2486 (DB)*

11. Testing of Samples/Procedure

– Section 8/18(b) & (c) – Conviction – Test of Samples – 6 packets of contraband seized – Samples taken only from one packet and not from other 5 packets – Report of FSL is only of one sample out of two samples taken from one packet – Held – Such report can only be accepted for one packet from which sample was taken – Prosecution case only proved to the extent of quantity of one packet (1kg 40 gms) and not with respect of other 5 packets – Conviction of appellants u/S 8/18(b) of the Act for commercial quantity and sentence awarded cannot be sustained and is set aside – Conviction converted to the charge u/S 8/18(c) of the Act, according to which 8 years jail sentence is sufficient – Appeal partly allowed: *Bhupendra Singh Vs. Government of India, I.L.R. (2018) M.P. 1183*

NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ACT, 2004 (2 OF 2005)

– Section 2(g) & 10(3) – No Objection Certificate – Time Period – Held – Petitioner submitted application for NOC and for according status of Minority Educational Institution – Application not decided within 90 days nor petitioner has received any communication regarding acceptance or rejection of the same – As per Section 10(3) of the Act of 2004, in such circumstances, permission is deemed to have been granted: *Shanti Educational Society Vs. State of M.P., I.L.R. (2019) M.P. 1655*

– See – Right to Children of Free and Compulsory Education Act, 2009: *Shanti Educational Society Vs. State of M.P., I.L.R. (2019) M.P. 1655*

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT (73 OF 1993)

– Affiliation – Grant/Refusal thereof – Right of Inspection – Petitioner, a private unaided self financed institution imparting training and education in teacher training courses of D.Ed/D.El.Ed – Petition against the order passed by Respondent Board to all Collectors of State of MP asking to conduct inspection of all institutions for purpose of renewal/grant of affiliation and also to inspect as to whether institutions have complied with conditions and requirements prescribed under the Act of 1993 – Held – Respondents may conduct a preliminary fact finding enquiry in respect of the institutions granted recognition under the Act of 1993 and regulations thereunder regarding violation of norms and standard prescribed therein and may also conduct inspection for affiliation but after doing so, if they find any such violation, they shall not take any action on their own and shall forward the enquiry report to the competent

authority i.e Regional Committee constituted under the Act of 1993 for further action – Respondent Board shall not on their own take any action towards refusal of or withholding renewal or affiliation on account of any violation committed by petitioner institutions regarding norms and standard prescribed under the Act – With above observations, petition stands dismissed: *Renaissance Education Society Vs. National Council for Teacher Education, I.L.R. (2017) M.P. 833 (DB)*

– Sections 12, 14 & 15 – National Council for Teacher Education (Recognition norms & procedure) Regulations, 2014 , Regulation 5 r/w Regulation 7(1) – Whether in terms of Regulation 5 r/w 7(1) of the Regulations of 2014, an application submitted by the institution for grant of recognition to the NCTE, not accompanied with the no objection certificate issued by the concerned affiliating body(Board), can be treated as complete and valid application – Held – No, on conjoint reading of Regulation 5 and 7(1) of the Regulations of 2014, it is obvious that if the application submitted is not accompanied with the required documents, the same must be treated as incomplete and as rejected and application fees shall be forfeited – Writ petition dismissed: *Maa Reweti Educational & Welfare Society Vs. National Council for Teachers Education, I.L.R. (2016) M.P. 2269 (DB)*

NATIONAL COUNCIL FOR TEACHER EDUCATION (RECOGNITION NORMS & PROCEDURE) REGULATIONS, 2014

– Regulation 5 r/w Regulation 7(1) – See – National Council for Teacher Education Act, 1993, Sections 12, 14 & 15: *Maa Reweti Educational & Welfare Society Vs. National Council for Teachers Education, I.L.R. (2016) M.P. 2269 (DB)*

NATIONAL HIGHWAYS ACT (48 OF 1956)

– Sections 3A, 3B, 3C & 3D and Land Acquisition Act (1 of 1894), Sections 5A, 4 & 6 – Acquisition of land – Out of 98.76 acres of land of the petitioners, only the land admeasuring 0.429 hectares has been acquired for the construction of by-pass road i.e. for public project – Held – Construction by the National Highway Authority of India after carrying out the survey and thereafter the decision has been taken to acquire the land for the purpose of construction of by-pass road – No fault can be found with the action of respondent no. 4 in not acceding to the prayer made by petitioners for acquisition of alternative land – Petition dismissed: *Neeti Development & Leasing Pvt. Ltd. (M/s.) Vs. Union of India, I.L.R. (2016) M.P. 1343*

– Section 3H – Deposit and payment of amount – Land acquired was jointly recorded in the names of petitioners and respondents No. 4 to 6 – Petitioners submitted memorandum before competent authority to pay the amount of compensation after

apportioning the same regarding their share – Respondents No. 4 to 6 raised objection that the land has already been partitioned – Respondents directed to pay the compensation amount to the respondents No. 4 to 6 – Held – Dispute means assertion of claim by one party and its denial by other – Therefore, when the dispute had arose that whether respondents No. 4 to 6 are entitled for compensation or whether petitioners are also entitled for the same, the same should have been referred to Original Civil Court for adjudication – Decision of respondents to pay the compensation to respondents No. 4 to 6 quashed – Authorities directed to refer the dispute to Original Civil Court and as the amount has already been paid to respondents No. 4 to 6 they shall furnish an undertaking and surety before Civil Court that in case they lose from Civil Court and the amount of compensation determined by Competent Authority is payable to petitioners also, then they shall pay such amount to the petitioners as per judgment of Civil Court: *Ramswaroop Vs. National Highway Authority of India, I.L.R. (2016) M.P. 1059*

NATIONAL RURAL EMPLOYMENT GUARANTEE ACT (42 OF 2005)

– Sections 2(e), 14(2) & 14(3) and Land Revenue Code, M.P. (20 of 1959), Section 17(2) – Appellate Authority – Delegation of Power – Appellant appointed as Gram Rojgar Sahayak – Respondent No. 5 filed an appeal before Additional Collector which was allowed and appointment of appellant was quashed –Challenge to competency of Additional Collector as Appellate Authority – Held – Act of 2005 empowers the Collector to delegate the duties conferred on him to Additional Collector in exercise of powers u/S 17(2) of the Code of 1959 – In the present case, Additional Collector delegated with duties of Collector/District Programme Coordinator was fully competent to discharge the function as Appellate Authority – Appeal dismissed: *Mukesh Rawat Vs. State of M.P., I.L.R. (2018) M.P. *45 (DB)*

NATIONAL SECURITY ACT (65 OF 1980)

SYNOPSIS

1. **Advisory Board & Approval from State/Central Govt.**
2. **Appeal**
3. **Applicability/Validity of Detention Order**
4. **Detention Order/Grounds & Guidelines**
5. **Detenu already in Jail**
6. **Period of Detention**
7. **Writ Jurisdiction/Scope**

1. Advisory Board & Approval from State/Central Govt.

– Sections 3(3), 8, 9, 10 & 13 – Detention Order – Reference to Advisory Board – Held – Nothing on record to establish that State made reference to Advisory Board within 3 weeks from date of detention – It is not brought on record that as per opinion of Advisory Board, State confirmed the detention order to continue upto maximum period of 12 months – Even in the return filed, State has not stated regarding compliance of Sections 8, 9 & 10 of the Act – Impugned order and further approval by State Government is in non observance of the procedure prescribed under the Act of 1980 and hence quashed – Petitioner directed to be released from jail – Petition allowed: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

– Section 3(3) & 3(5) – Submission of report to Central Government – Held – Nothing on record to show that compliance of Section 3(5) of the Act has been made by State by submitting report to Central Government together with grounds on which order has been made – Non-compliance of the mandatory provision of Section 3(5) vitiated the order: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

– Section 3(4) – Detention Order – Approval – Time Period – Held – Approval of detention order by State Government ought to have been procured within 12 days of the order – Nothing on record to show that office of District Magistrate received any approval from State Government within time stipulated u/S 3(4) of the Act – Conduct of State establishes malice and foul play – Proceedings deserves to be quashed: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

– Section 3(5) – Mandatory Provision – Held – If an order is passed u/S 3(2) or approved u/S 3(4) of the Act, State Government is supposed to report the same to Central Government within seven days – No such communication/document filed by State showing compliance of the mandatory provision of Section 3(5) – Order deserves to be set aside: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

2. Appeal

– Section 3(5) – Detention Order – Appeal – Intimation of – Held – District Magistrate, in the ground of detention has to inform petitioner of his entitlement to appeal not only to State Government, but also to detaining authority and Central Government – Although initial detention order was just and proper but in absence of such intimation, such order is bad in law and hereby set aside: *Shubham Singh Baghel Vs. State of M.P., I.L.R. (2020) M.P. 688 (DB)*

3. Applicability/Validity of Detention Order

– Section 3(2) & (3), Food Safety and Standard Act, (34 of 2006), Section 3(1)(zx) & 3(1)(zz) – Applicability – Held – General law shall not nullify the provisions of special law – When there exist a special statute to deal with a particular situation, then resort to preventive detention under the NSA (general law) is uncalled for – Further, Act of 2006 does not provide for imprisonment for such act of petitioner – Impugned order is malicious exercise of executive discretion: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Section 3(2) – Detention Order – Validity – Held – Even if initial detention order is valid, it becomes vitiated if the counter affidavit affirming the reply to petition is not that of the District Magistrate who passed detention order – Affidavit filed by Police personnel – Order stands vitiated: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

– Section 3(2) – Detention Order – Validity – Held – While passing order of detention, the material (list of pending cases) considered by District Magistrate, was itself defective and incorrect – Order deserves to be set aside: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

– Sections 5 & 14 – Preventive Detention – Right to make representation – Detenu was not informed about his right to make representation to Central Govt. – Opportunity was denied to detenu – Continued detention is illegal and untenable – Petition allowed: *Sattar Vs. State of M.P., I.L.R. (2016) M.P. 126 (DB)*

4. Detention Order/Grounds & Guidelines

– Section 3 – Detention Order – Ground – Held – 19 cases already registered against petitioner – In present case, allegation of cow vigilantism against petitioner worth derision in the strongest terms – Detention order was just and proper: *Shubham Singh Baghel Vs. State of M.P., I.L.R. (2020) M.P. 688 (DB)*

– Section 3(2) – Detention Order – Criminal Record – Held – This is the only FIR registered against petitioner, no other criminal case exists – One singular offence is inadequate to resort to draconian provisions of NSA 1980 to deprive a citizen's liberty: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Section 3(2) & (3) – Detention Order – Procedure & Guidelines – Explained and enumerated: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

– Section 3(2) & (3) – Detention Order – Opinion/Satisfaction of District Magistrate – Held – In the grounds of detention, District Magistrate merely stated

that petitioner is attempting to get bail – No definitive finding that he filed an application for bail and same is under consideration – Opinion of District Magistrate with regard to possibility of petitioner being released on bail, is not as per requirement stipulated by Apex Court – Order of detention vitiates – Detention of petitioner is illegal – Impugned order set aside – Petition allowed: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

– Section 3(2) & (3), Food Safety and Standard Act, (34 of 2006), Section 3(1)(zx) & 3(1)(zz) and Constitution – Article 21 – Detention Order – Grounds – Sub-Standard food article seized from petitioner – Held – District Magistrate failed to distinguish between "sub-standard food" and "unsafe food" as described in Act of 2006 – Violations of special law must be dealt with provisions of such special law – Detention order under Act of 1980 is violative of fundamental right of petitioner under Article 21 of Constitution and shows gross non-application of mind – Petitioner directed to be released – Petition allowed: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Section 3(2) & 8 – Detention Order – Representation – Revocation of Detention – Held – Grounds of detention order only informs petitioner of his right to representation before State Government, it does not reflect that he was also informed about his right to representation before detaining authority – Impugned order vitiates and is liable to be quashed: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

5. Detenu already in Jail

– Section 3(2) & 3(3) – Issuance of order of detention against the detenu who is already in jail – Detaining authority has to form an opinion that in case the detenu files an application for bail there is likelihood of detenu being released on bail and taking into account his antecedents, he must be detained in order to prevent him to indulge in prejudicial activities which are detrimental to public order: *Khurshid Vs. State of M.P., I.L.R. (2017) M.P. *21 (DB)*

6. Period of Detention

– Section 3(2) – Detention Order – Period of Detention – Held – A order of detention under NSA is not vitiated merely because it does not specify the period of detention, as there is no provision in the Act, mandating such requirement – Although it shows non-application of mind by authority: *Sudeep Jain Vs. State of M.P., I.L.R. (2019) M.P. 2518 (DB)*

– Section 3(2) & 3(3) – Affidavit of authority who passed the order of detention – Order of detention under National Security Act, 1980 without mentioning the period of detention – As per Section 3 of the Act of 1980, the order of detention

is required to be passed for the specific period – The order is vitiated in view of enunciation of law: *Khurshid Vs. State of M.P., I.L.R. (2017) M.P. *21 (DB)*

– Section 3(3) Proviso – Period of Delegation of Authority & Period of Detention – Held – Period of 3 months provided in proviso to Section 3(3) refers to period of delegation of authority to detain, to District Magistrate or Commissioner of Police, by order in writing of the State Government and same ought not to be confused with the period of detention that is required to be mentioned in detention order – Further, provisions of the Act also do not mandate the requirement of period of detention to be mentioned in detention order: *Chotu @ Suyash Chaubey Vs. Union of India, I.L.R. (2019) M.P. 2265 (DB)*

– Section 3(3) proviso and Constitution – Article 22(4) – Held – Period of detention has not been specified in impugned order – In exercise of power u/S 3(3) of the Act, such order can be passed by District Magistrate for a period not longer than 3 months, subject to approval by State – Such order without specifying the period vitiates the same as per Section 3(3) of the Act and Article 22(4) of Constitution: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

7. Writ Jurisdiction/Scope

– Section 3(3) and Constitution – Article 226 – Writ Jurisdiction – Scope – Held – Detention order can be challenged at any stage and the distinction between pre decision stage and post decision stage is inconsistent – Even at pre execution stage, jurisdiction of Court can be invoked: *Akash Yadav Vs. State of M.P., I.L.R. (2019) M.P. 1020 (DB)*

NATURAL JUSTICE

– Violation – The very person/officer, who accords the hearing to the Objector, must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated: *Omprakash Jaiswal Vs. State of M.P., I.L.R. (2016) M.P. 2913 (DB)*

NEGOTIABLE INSTRUMENTS ACT (26 OF 1881)

– Section 20 – Inchoate stamped instruments – This section declares that inchoate instruments are also valid and legally enforceable – Respondent admitted having signed blank cheque – In case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability – Further held, an individual is authorized to complete the inchoate instruments deliver to him by filling up the blanks: *Sunita Dubey (Smt.) Vs. Hukum Singh Ahirwar, I.L.R. (2016) M.P. 566*

– Section 20 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Effect of admission of signatures on cheque and giving it to the payee – Held – Once accused admits signature on the cheque and also that he gave the same to the payee, presumption u/S 20 of Negotiable Instrument Act can be drawn – Further held – Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments which is either wholly blank or having written thereon an incomplete negotiable instrument then he gives prima facie authority to the holder to complete an incomplete negotiable instrument: *Nicky Chaurasia Vs. Vimal Kumar, I.L.R. (2017) M.P. 236*

SYNOPSIS : Section 138 to 142

1. Amendment in Complaint

– Section 138 and Criminal Procedure Code, 1973 (2 of 1974) – Practice and Procedure – Amendment in Complaint – Petitioner/Complainant filed a case against the Respondent/Accused u/S 138 of the Act of 1881 – Subsequently, complainant filed an application seeking amendment in the complaint regarding a typographical error, which was allowed by the JMFC – Accused filed a revision and the same was allowed – Complainant filed this petition – Held – Though there is no provision in the Criminal Procedure Code for amendment of the pleadings, the Apex Court has held that every Court whether civil or criminal possesses inherent powers to do right and to undo a wrong in course of administration of justice – In the present case, the year was wrongly mentioned as 2013 in place of 2014, it is a clerical/ typographical error which can be corrected – Impugned order set aside and the one passed by the JMFC is restored – Petition allowed: *Shyama Patel (Smt.) Vs. Mehmood Ali, I.L.R. (2018) M.P. 812*

2. Appropriate Party

– Section 138 – Appropriate Party to a Complaint – Applicant, a Bank Manager was arrayed as an accused in a complaint u/S 138 of the Act of 1881 – Challenge to – Held – Provisions of Section 138 refers to a person as an accused who is the drawer of the dishonoured cheque – It does not contemplate any other mode of impleading of any other person as accused – An employee of bank cannot be prosecuted u/S 138 of the Act of 1881 – Further held – A penal legislation has to be strictly construed – Proceeding against applicant quashed – Application allowed: *Ravindra Kumar Mani Vs. Ramratan Kushwaha, I.L.R. (2018) M.P. *75*

– Section 138 – Cheques were signed by 'A' for and on behalf of Aman Jeweler as proprietor of the concern – In the legal notice also, he was described as proprietor of the concern – In complaint filed u/s 200 of Cr.P.C., present applicant also added – No prima-facie evidence available to infer that Aman Jeweler is a partnership firm and present applicant is a partner – Applicant has no liability for dishonor of cheques – Therefore, applicant discharged from charge: *Manish Vs. K.G. Sharma, I.L.R. (2016) M.P. 284*

3. Compounding of Case

– Section 138 – Dishonour of cheque – Compounding of cases – Reference to Larger Bench – Whether compounding fee is applicable to cases which are compounded after 03.05.2010 retrospectively, irrespective of the date on which the cheque is executed – Held – Compounding of cases can be allowed at different stages of proceedings depending on the stage when the compounding application is made, so the fact that the cheque is issued prior to 03.05.2010, i.e. when the Hon'ble Apex Court formulated the guidelines, will make no difference and the guidelines should be given effect prospectively: *Veerendra Vs. Sri Transport Finance Company, I.L.R. (2016) M.P. 1518 (DB)*

– Section 138 – Dishonour of cheque – Compounding of cases – Settlement before Lok-Adalat – Whether the guidelines relating to compounding of cases are to be given a go by when a case is compounded before Lok-Adalat – Held – As per the dictum of the Apex Court in Damodar's case and also Prateek Jain's case even when a case is decided before Lok-Adalat the requirement of following the guidelines of Apex Court in the above cases should not normally be dispensed with, however if there is special/specific reason to deviate then the Court can reduce or waive the compounding cost by recording the reasons in writing – Reference answered accordingly: *Veerendra Vs. Sri Transport Finance Company, I.L.R. (2016) M.P. 1518 (DB)*

– Section 138 – Dishonour of cheque – Compounding of cases – Whether compounding fee is not leviable in cases where date of cheque is prior to pronouncement of judgment in Damodar's case on 03.05.2010 – Held – Date of cheque will make no difference and the relevant fact to be kept in mind is, when the compounding application is made and is being considered and not the date when cheque is issued: *Veerendra Vs. Sri Transport Finance Company, I.L.R. (2016) M.P. 1518 (DB)*

– Section 138 – Dishonour of cheque – Compounding of cases – Whether the concerned Court has discretion to reduce the amount of compounding cost in a given case – Held – Yes, in a given case the concerned Court can always reduce the costs by imposing minimal cost or even waive the same by recording reasons in writing about such variance as per the dictum of the Apex court in Damodar S. Prabhu Vs. Sayed Babalal H. [reported in 2010(4) MPLJ 257] and also in M.P. State Legal Services Authority vs. Prateek Jain & another [reported in 2015(1) SCC (Cri.) 211]: *Veerendra Vs. Sri Transport Finance Company, I.L.R. (2016) M.P. 1518 (DB)*

– Section 138 – See – Criminal Procedure Code, 1973, Section 320: *Sureshchand Vs. Prakashchand, I.L.R. (2018) M.P. *99*

4. Condonation of Delay

– Section 138 & 142 – Dishonour of cheque – Complaint – Delay of more than one month – Application for condonation of delay u/S 142 of Negotiable Instruments Act not filed – Cognizance taken and notices issued – Condonation application filed at the stage of final hearing – Whether in a case u/S 138 of Negotiable Instruments Act, 1881, a complaint, filed with delay, is entertainable, when after taking cognizance of the complaint, application for condonation of delay has been filed – Held – The proceedings of the Court below upto the stage of taking cognizance of complaint are set aside – Entire complaint cannot be dismissed – Liberty given to the Complainant to file application u/S 142 of Negotiable Instruments Act for condonation of delay, and the Court below to decide the application in accordance with law: *Manav Sharma Vs. Umashankar Tiwari, I.L.R. (2016) M.P. 3154*

5. Death of Complainant

– Section 138 – Complaint – Appeal against acquittal is pending – During pendency of appeal appellant died – Applicant on the basis of Will claiming for substitution as legal representative in appeal – Whether in a complaint under Section 138 of the Act of 1881, on death of Complainant or Appellant the proceeding or appeal will abate – Held – No, the proceedings or appeal will not abate on death of

Complainant or Appellant and legal representative of a Complainant or Appellant is entitled to be substituted for further prosecuting the complaint or appeal – I.A. allowed – Amendment to be incorporated accordingly: *Rajmal Agarwal Vs. Dinesh Sahu, I.L.R. (2016) M.P. 1777*

6. Defence

– Section 138 and Evidence Act (1 of 1872), Section 45 – Defence – The grounds which are not subject matter of the case, could not be permitted to raise: *Sadhna Pandey (Smt.) Vs. P.C. Jain, I.L.R. (2016) M.P. 865*

– Section 138 and Evidence Act (1 of 1872), Section 45 – Dishonor of cheque – Defence – Difference of signature – Not taken in reply of demand notice – Nor cross- examined complainant's witnesses on such specific defence – Not available: *Sadhna Pandey (Smt.) Vs. P.C. Jain, I.L.R. (2016) M.P. 865*

– Section 138 & 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 200 – Cognizance – Statement of Complainant – Held – Magistrate taking cognizance of offence u/S 138 on basis of affidavit of complainant, is in consonance with provisions of Section 145 of the Act of 1881 – No need of statement to be recorded u/S 200 Cr.P.C. before taking cognizance – Application dismissed: *Shastri Builders Through Proprietor Vs. Peetambara Elivators (M/s.) Through Proprietor, I.L.R. (2019) M.P. *60*

7. Demand Notice

– Section 138 – Demand Notice – Initially notice was issued and complaint was filed against one Azad Kumar Jain as partner of firm and during pendency of the case, complainant amended the cause title and name of Azad Kumar Jain was substituted by Sanad Kumar Jain, as partner of the firm – Charges were framed against Sanad Kumar Jain, against which in a revision, Sanad Kumar Jain was discharged of the charges – Held – Notice was issued against Azad Kumar Jain, who was neither the partner of the firm nor was the signatory of the cheques issued – Sanad Kumar Jain who was the partner of the firm and was the signatory of the cheques, was not issued any demand notice, which is a mandatory requirement u/S 138 of the Act – Revisional Court rightly discharged Sanad Kumar Jain – Application dismissed: *Rajesh Kumar Samaiya Vs. M/s. Mahaveer Stationers, I.L.R. (2017) M.P. 977*

– Section 138 (b) & (c) – Demand Notice – Service of Notice – Accrual of Cause of Action – Two complaint cases registered against applicant/accused – Objections filed by complainant on the ground that cases were filed prior to expiry of 15 days period from the date of receiving notices – Objections dismissed – Challenge

to – Held – Commission of offence and its prosecutability are two distinct issues – When cheque is dishonoured, offence is committed but its prosecutability is based on conditions as specified in Section 138(a), (b) and (c) – In the present case, notice was returned unclaimed on 01.01.2008 and 03.01.2008 and complaints were filed on 14.01.2008, prior to expiry of 15 days – Cause of action to take cognizance and to prosecute the complainant do not arise – Date of return of notice as unclaimed will be the date for reckoning the period of 15 days – Order of cognizance set aside – Application allowed: *Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd., I.L.R. (2017) M.P. 2290*

– Section 138 (b) & (c) and General Clauses Act (10 of 1897), Section 27 – Service of Notice – Interpretation – Section 27 of the Act of 1897 indicates expression "served, "give" or "sent" whereas Section 138(c) of Act of 1881 indicates "giving of notice" and "accrual of cause of action" – Therefore for the purpose of Section 138, Court ought to construe the word "give" as "receive": *Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd., I.L.R. (2017) M.P. 2290*

8. Legally Enforceable Debt/Liability

– Section 138 – Maintainability – Payment in Pursuance to Agreement to Sell – Complaint quashed by High Court u/S 482 Cr.P.C. – Held – Cheques were issued under and in pursuance of agreement to sell, though it does not create any interest in immovable property, but it constitutes a legally enforceable contract between parties to it – Payment made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for purpose of Section 138 – Complaint maintainable – Impugned order quashed – Appeal allowed: *Ripudaman Singh Vs. Balkrishna, I.L.R. (2019) M.P. 1620 (SC)*

9. Liability of Directors of Company

– Section 138 & 141 – Directors – Liability – Held – Applicant proved his resignation prior to issuance of cheques and it is also found that he is not the signatory of alleged cheques – No specific averments in the complaint against him – Complainant failed to specify act of applicant in day to day affairs of company – Order of cognizance against applicant set aside – Application allowed: *Santosh Vs. State of M.P., I.L.R. (2019) M.P. 1914*

– Section 138 & 141 – Liquidation of Company – Powers of Criminal Court – Held – Criminal Court has power to take cognizance on complaint u/S 138 of the Act of 1881, against the Directors of Company even if it is under liquidation – Merely on basis of appointment of liquidator, power of criminal Court cannot be curtailed: *Santosh Vs. State of M.P., I.L.R. (2019) M.P. 1914*

– Section 138 & 141 – Quashment – Director of Company – Respondent filed a complaint case whereby offence u/S 138 of the Act of 1881 was registered against petitioner and her husband, both being Director of a company – Held – Nothing has been averred against the petitioner except that she is the wife of accused and is a Director of the Company – Husband who was the director of the company made all the transactions and was responsible for it – Earlier also cheques were issued by the husband which were dishonoured and subsequently letter of apology was also written by husband and further eight cheques were signed and issued by the husband – Petitioner was a dormant partner/Director of the company, not having any active role in transactions of the company – Under these circumstances, summoning the accused/ petitioner by trial Court seems to be not justified – Order passed by trial Court against the petitioner is set aside – Petition allowed: *Archana Bagla Vs. M/s. Betul Oil Ltd., I.L.R. (2017) M.P. *86*

– Section 138 & 141 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Necessary Party – Maintainability of Complaint – Held – Cheque issued by Directors of Company – In a complaint u/S 138 of the Act of 1881, when Company is not arrayed as a party/accused, criminal proceedings issued against Directors is not maintainable – Proceedings of criminal cases quashed – Petitions allowed: *Ganesh Vs. Chhidamilal, I.L.R. (2017) M.P. *136*

– Section 138 & 141 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Liability/ Role of Directors – Specific Pleadings – Held – Directors of company cannot get the complaint quashed merely on the ground that no particulars and specific averments are given in complaint about his role in day to day business of company – Basic averments would be sufficient to send him for trial and his further role could be brought out in trial – For quashment u/S 482 Cr.P.C., it must be necessary to produce some incontrovertible evidence in his favour: *Santosh Vs. State of M.P., I.L.R. (2019) M.P. 1914*

10. Liability of Drawer of Cheque

– Section 138 – Drawer of cheque – Account holder did not issue cheque – His brother issued cheque on an account maintained by his brother – Account holder is not responsible for return of cheque – Person who had issued cheque is also not responsible as he had not issued cheque on an account maintained by him – Complaint dismissed: *Kuldeep Shrivastava Vs. Ramesh Chandra, I.L.R. (2016) M.P. 587*

– Section 138 – Drawer of the cheque – Who is – Person who draws amount through cheque from his account maintained by him with the banker: *Rafat Anees (Smt.) Vs. Smt. Bano Bi, I.L.R. (2017) M.P. 473*

– Section 138 – Essential factors for attracting Section 138 of Negotiable Instruments Act – Person who is to be made liable should be the drawer of the cheque, drawn the cheque from his bank account, for payment of any amount to another person, for discharge of any debt or other liability: *Rafat Anees (Smt.) Vs. Smt. Bano Bi, I.L.R. (2017) M.P. 473*

– Section 138 – Signatory of Cheque – Maintainability of Case – Complaint case u/S 138 of the Act of 1881 registered before the trial Court against applicant on the ground that he was allegedly the joint signatory of the cheque which was dishonoured – Challenge to – Held – Name of applicant is not printed in the disputed cheque, only name of co-accused is printed – Applicant not liable and is hereby discharged for the offence u/S 138 of Act of 1881 – Application allowed: *Rajendra Kumar (Dr.) Vs. Vallabh Chandak, I.L.R. (2017) M.P. *82*

– Section 138 – Questioned cheque was not produced before the Drawee Bank within six months – Complainant has not observed the legislative intent – No criminal liability of the drawee: *Harish Kulshrestha Vs. Vikram Sharma, I.L.R. (2016) M.P. 2832*

11. Presumption/Rebuttal/Adverse Inference

– Section 138 – Non-Filing of Income Tax Return by Complainant – Effect – Held – Mere non-filing of ITR by complainant would not automatically mean that he had no source of income – No adverse inference can be drawn against complainant: *Ragini Gupta (Smt.) Vs. Piyush Dutt Sharma, I.L.R. (2019) M.P. 2362*

– Section 138 & 139 – Presumption – Rebuttal – Held – In view of the presumption u/S 139, burden shifts to applicant/accused to dislodge the presumption: *Ragini Gupta (Smt.) Vs. Piyush Dutt Sharma, I.L.R. (2019) M.P. 2362*

– Section 138 & 139 and Evidence Act (1 of 1872), Section 45 – Presumption – Examination of Signatures by Expert – Appreciation of Evidence – Held – Applicant/accused submitted that cheque was stolen but she never lodged FIR – No application u/S 45 of Evidence Act ever filed by her for examination of her signatures – Applicant failed to satisfactorily explain the circumstances under which cheque was issued by her or has been misused by complainant – It can safely be presumed/inferred that cheque was issued in discharge of legally recoverable debt/liability – Conviction affirmed – Revision dismissed: *Ragini Gupta (Smt.) Vs. Piyush Dutt Sharma, I.L.R. (2019) M.P. 2362*

– Sections 138, 139 & 20 – Presumption – Held – Applicant/accused in her notice, without disputing her signatures stated that other entries were filled by complainant or got it filled from other person – Merely because other entries were

not filed by applicant, would not absolve her from her liability arising from the cheque – There is a presumption in favour of the holder of cheque: *Ragini Gupta (Smt.) Vs. Piyush Dutt Sharma, I.L.R. (2019) M.P. 2362*

– Section 139 – Presumption in favour of holder – Non-applicant has not adduced any plausible evidence to rebut the presumption – During cross examination contrary suggestions have been given regarding the liability – Suggestions of bribe and amount in question paid as advance by way of loan on interest were given, which all were denied – Agreements tendered as evidence were not challenged by Non-applicant by way of cross examination – Cheques issued for legally enforceable debt – Petition being bereft of merits – Dismissed: *Bhagwatiprasad Vs. Rajesh, I.L.R. (2016) M.P. *24*

12. Quashment/Jurisdiction U/s 482 CrPC

– Section 138 and Criminal Procedure Code, 1973 (2 of 1974), Section 200 & 482 – Quashing of proceedings – Non-applicant no. 1 sold land to applicant – Sale consideration was given by cheque signed by non-applicant no. 2 – Cheque dishonoured – Complaint filed against non-applicant no. 2 & applicant – Held – Non-applicant no. 2 who has signed and issued the cheque, is only liable under Section 138 of Negotiable Instruments Act, even though sale deed was executed in favour of the applicant – Application allowed: *Rafat Anees (Smt.) Vs. Smt. Bano Bi, I.L.R. (2017) M.P. 473*

– Section 138 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Scope & Jurisdiction – Held – This Court in exercise of powers u/S 482 Cr.P.C., cannot adjudicate upon the disputed questions of facts nor defence of accused can be considered – The defence plea put-forth by applicant that complainant misused a misplaced cheque cannot be considered at this stage – Further, legitimate prosecution should not be stifled in mid way: *Shastri Builders Through Proprietor Vs. Peetambara Elivators (M/s.) Through Proprietor, I.L.R. (2019) M.P. *60*

– Section 138 – See – Criminal Procedure Code, 1973, Section 482: *K. Sheshadrivashu Vs. State of M.P., I.L.R. (2018) M.P. 1303*

13. Report of Handwriting Expert

– Section 138 and Evidence Act (1 of 1872), Section 45 – Examination of signature by hand writing expert – Dishonor of cheque on the ground of insufficient fund and not on ground of difference of signature – Not permissible: *Sadhna Pandey (Smt.) Vs. P.C. Jain, I.L.R. (2016) M.P. 865*

– Section 138 and Evidence Act (1 of 1872), Section 45 – Hand writing expert – Age of writing of the cheque as well as signature of the accused are in

dispute – Trial Court will call the handwriting expert for examination of the disputed cheque – Order of trial Court liable to be set aside: *Sohanlal Singhal Vs. Sunil Jain, I.L.R. (2016) M.P. 277*

14. Miscellaneous

– Section 138 – See – Criminal Procedure Code, 1973, Sections 204(4), 378, 401 r/w Sections 397 & 482: *Bhupendra Singh Vs. Saket Kumar, I.L.R. (2016) M.P. *3*

– Section 138 – See – Criminal Procedure Code, 1973, Section 397 & 401: *Simmi Dhillo (Smt.) Vs. Jagdish Prasad Dubey, I.L.R. (2018) M.P. *27*

– Section 138 – See – Penal Code, 1860, Section 409 & 120-B: *Nike India Pvt. Ltd. Vs. My Store Pvt. Ltd., I.L.R. (2019) M.P. 1903*

– Section 138 – See – Penal Code, 1860, Section 420: *Rahul Asati Vs. State of M.P., I.L.R. (2018) M.P. *34*

– Section 138(b) – See – Criminal Procedure Code, 1973, Section 91: *Amit Thapar Vs. Rajendra Prasad Gupta, I.L.R. (2016) M.P. 2126*

– Section 138 Proviso (b), (c) & 142(1)(b) – See – Criminal Procedure Code, 1973, Section 482: *Mohd. Jahin Vs. Nibbaji, I.L.R. (2017) M.P. 1534*

NIKSHEPAKON KE HITON KA SANRAKSHAN ADHINIYAM, M.P., 2000 (16 OF 2001)

– Section 4 & 8 and Constitution – Article 226 – Attachment Order – Special Court – Attachment order of bank accounts and properties of petitioner was passed against the petitioner in a proceeding in which he was not even a party – Held – Attachment order can be passed by District Magistrate on complaints of depositors or otherwise – Such attachment order is an ad-interim order subject to judicial scrutiny by Special Court u/S 8 of the Adhiniyam and therefore principles of natural justice are not attracted before issuance of order of attachment – Principle of natural justice is codified in the shape of Section 8 of the Act and District Magistrate, after passing an order of attachment is required to apply to Special Court to make the order of attachment absolute and that is to be done only after issuing show cause notice to the person concerned – In the present case, petitioner has an alternate, efficacious and statutory remedy u/S 8 of the Act wherein he can raise all possible objections against attachment – Proceedings u/S 8 of the Act are already pending before the Special Court, hence interference declined – Petitions disposed of: *Pushp Vs. State of M.P., I.L.R. (2018) M.P. 702*

NURSING SHIKSHAN SANSTHA MANYATA NIYAM, M.P., 2018

– Rule 4 & 5 – B.Sc. & M.Sc. (Nursing) – Affiliation/Recognition – Online Applications – Held – Appellant has not filed any proof to show that it had given all required particulars in online application, it was incomplete with no supporting documents – Certificate of affiliation was issued to appellant institution much after the last date for submission of online application which shows that document of affiliation was not even available at the time of filing online application – Further as per the requirement, appellant did not have their own hospital – No occasion for granting permission to appellant institution for running M.Sc. (Nursing) course for academic session 2018-19 – Appeal dismissed: *Pt. Bateswari Dayal Mishr Shiksha Samiti Vs. M.P. Nurses Registration Council, I.L.R. (2019) M.P. 1807 (SC)*

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OFFICIAL LANGUAGE ACT, M.P., 1957 (5 OF 1958)

– Section 3 – See – Constitution – Article 343 & 345: *Vinod Devi (Smt.) Vs. Smt. Saroj Devi Gupta, I.L.R. (2018) M.P. 1164*

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PACKAGING AND LABELLING REGULATIONS, 2011

– Regulation 2.3(1)(5) – See – Food Safety and Standard Act, 2006, Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58: *ITC Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1814*

PANCHAYATS (APPEAL AND REVISION) RULES, M.P., 1995

– Section 3 – Appeal – Grounds – Held – The single bench disposed the writ petition on the ground of availability of an appeal under the Rules of 1995 but failed to appreciate that there was no adjudication by the authority in the present case and therefore remedy of appeal would be meaningless and purposeless in absence of adjudication: *Nani Invati (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 867 (DB)*

– Rule 3(da) – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Sections 21(4): *Jai Prasad Uikey Vs. State of M.P., I.L.R. (2018) M.P. 2748*

– Rule 5 – Appointment of Panchayat Karmi – Revision – Petitioner appointed as Panchayat Karmi on basis of merit – Respondent No.6 approached the authorities

claiming that he is a member of Scheduled Caste and should get the preference of appointment whereby Collector appointed Respondent No.6 on the said post without there being any order in respect of petitioner – Appeal was filed before Additional Commissioner whereby the same was allowed and order of collector was set aside on the ground that as per the government circular appointment of Panchayat Karmi was to be made strictly on merit basis – Respondent No. 6 filed a revision before the State Minister whereby the same was allowed in a cryptic manner without assigning any reason – Challenge to – Held – Proceedings under Rule 5 of the Rules of 1995 are quasi judicial in nature and authority is bound to record reasons while deciding revision – Order in revision was passed in a cavalier manner which is unsustainable in law – Order passed by Minister is set aside – Matter remanded back to pass a speaking order after giving opportunity of hearing to parties – Petition allowed: *Bharatlal Kurmi Vs. State of M.P., I.L.R. (2018) M.P. *15*

– Rule 5 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 21(4): *Punuwa Ahirwar Vs. State of M.P., I.L.R. (2018) M.P. *46*

PANCHAYATS (ELECTION PETITIONS, CORRUPT PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP) RULES, M.P., 1995

– Rules 3, 4, 7 & 8 – Election Petition – Summary Dismissal – Held – Election Tribunal can only dismiss the election petition summarily under Rule 8 of Rules of 1995 when the Election Petition is filed without compliance of Rule 3, 4 and Rule 7 and not otherwise – Petition cannot be dismissed summarily on merits without framing issues on disputed questions of facts, recording of evidence and affording opportunity of hearing to the parties – In the present case, Petition was dismissed on general allegations that provisions of Rule 3, 4 and 7 of the Rules of 1995 were not complied with but there was no specific findings as to in what manner these rules were not complied – Petition was dismissed on merit without conducting trial by framing issues and recording evidence summarily holding that allegations made in petition does not constitute corrupt practice – Further held – A sacrosanct duty is cast on the Election Tribunal to try and adjudicate election petitions like a trial of a suit – Election Petition cannot be decided in a cavalier manner by adopting casual approach – Order unsustainable and is quashed – Respondent directed to decide the petition in accordance with law – Writ Petition allowed: *Ramesh Patel Madhpura Vs. State of M.P., I.L.R. (2018) M.P. 483*

– Rules 3, 4, 7 & 8 – Held – As required under Rule 3(2) of Rules of 1995, the copy enclosed with election petition was not attested by petitioner – This Court earlier concluded that non-compliance of Rule 3, 4 or 7 would result into dismissal of

election petition and there is nothing in Rule 8 to suggest that such jurisdiction can only be exercised only when an objection is raised: *Aarya Maansingh Vs. State of M.P., I.L.R. (2018) M.P. 2860*

– Rule 3(2) & 8 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Laxmi (Smt.) Vs. Beena (Smt.), I.L.R. (2017) M.P. 88*

– Rule 7 – Security Amount – Held – As per Rule 7 of the Rules of 1995 it is mandatory to deposit security amount before the specified authority but it was deposited in bank – This court has earlier concluded that such deposit of security amount through challan in bank is not a compliance of Rule 7 – This aspect has not been examined by SDO: *Aarya Maansingh Vs. State of M.P., I.L.R. (2018) M.P. 2860*

PANCHAYAT (GRAM PANCHAYAT KE SARPANCH TATHA UP SARPANCH, JANPAD PANCHAYAT TATHA ZILA PANCHAYAT KE PRESIDENT TATHA VICE-PRESIDENT KE VIRUDH AVISHWAS PRASTAV) NIYAM, M.P., 1994

– See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 21 & 21-A: *Sikandar Khan Mev Vs. State of M.P., I.L.R. (2018) M.P. 2419*

– See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 21(4): *Jai Prasad Uikey Vs. State of M.P., I.L.R. (2018) M.P. 2748*

PANCHAYAT NIRVACHAN NIYAM, M.P., 1995

– Rule 5 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 30: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 881 (DB)*

– Rule 12(1) & 12(5) – Panchayat Elections – Registration officer by an undated order deleted the names of Respondents no. 4 to 36 from the voter list – Collector in appeal set aside the undated order of Registration Officer on the ground that no opportunity of hearing was given – Held – As per Rule 12(1) of the Nirvachan Rules, 1995, issuance of notices to the concerned voters was necessary and thereafter, an enquiry was to be held, but nothing has been done by the Registration Officer, which is contrary to the provisions as contained under Rule 12(1) – So the Registration Officer has committed grave illegality by deleting names of Respondents no. 4 to 36 – Appellate order passed by the Collector upheld: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Rule 12(1) & 12(5) – Panchayat Elections – Voter List – Amendment as per Appellate order – Held – As per Rule 12(5) of the Nirvachan Rules 1995, no

amendment to the Voter List as per the Appellate order is to be carried out after the last date & time fixed for nomination in the notice issued under Rule 28 of the Nirvachan Rules 1995 and before completion of elections: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Rule 12(5) – 'Any person Aggrieved' – Appellate proceedings – Application for intervention by the Petitioner before Collector – Held – 'Any Person Aggrieved' shall be a person either who was party to the decision making process before the Registration Officer or was the person who is adversely affected by the decision of the Registration Officer – Petitioner was neither a party to the proceedings nor was the affected person – Application for intervention rightly rejected: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Rule 28 – See – Constitution – Article 226 & 243-O: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Rule 40-A and Scheduled Caste & Scheduled Tribe Orders (Amendment) Act, (108 of 1976), Section 4, Second Schedule Part VIII – Petitioner filed nomination for election to the post of Sarpanch – Rejection thereof on the ground that name of petitioner did not appear in the "Dayara Register" maintained in the office of S.D.O. – Post of Sarpanch reserved for Scheduled Tribe woman candidate – Held – As per Rule 40-A of Nirvachan Niyam 1995 the petitioner has filed an affidavit in lieu of notice issued under Rule 40-A(1) asserting that she belongs to the category of Scheduled Tribe, so the returning officer shall have no jurisdiction for further enquiry and is obliged to treat the nomination as valid by force of sub-rule(2) of rule 40-A of the Nirvachan Niyam 1995 and even otherwise the "Manjhi" caste finds place at serial No. 29 in the list of Scheduled Tribes for the State of M.P. as per the Act of 1976 – Impugned communication is quashed and petitioner permitted to contest the election for the post of Sarpanch: *Vidhya Manji (Smt.) Vs. M.P. State Election Commission, I.L.R. (2016) M.P. 1876*

– Rules 72, 77 & 81 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Sandhaya Mihilal Rai (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 1832*

– Rule 80 – Election Petition – Recounting of Votes – Grounds – Held – Mere narrow margin of votes between returned candidate and election petitioner, itself is not a ground for directing recount: *Aarya Maansingh Vs. State of M.P., I.L.R. (2018) M.P. 2860*

– Rule 80 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Aarya Maansingh Vs. State of M.P., I.L.R. (2018) M.P. 2860*

– Rule 80 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Balwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 1150*

– Rule 80 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Devki Nandan Dubey Vs. Purshottam Sahu, I.L.R. (2019) M.P. 316*

PANCHAYAT RAJ EVAM GRAM SWARAJ ADHINIYAM, M.P., 1993 (1 OF 1994)

– Government Notification – Prescribed Authority – As per the government notification dated 05.03.1994 which has been modified from time to time, the Sub Divisional Officer (Revenue) has been notified as prescribed authority for Gram Panchayat and similarly Collector for the Janpad Panchayat and Divisional Commissioner for Zila Panchayat – Resolution of the Janpad Panchayat can be assailed u/S 85(1) of the Adhiniyam before the Collector: *Machhali Udyog Sahakari Samiti Maryadit Vs. State of M.P., I.L.R. (2017) M.P. 555*

– Section 11 – Appeal – Authorization – Held – As per general interpretation of Section 11, if Gram Panchayat wants to sue or to file appeal, it has to pass a resolution authorizing somebody to act on its behalf – In absence of any such resolution, Sarpanch cannot sue and file an appeal independently: *Balbeer Singh Lodhi Vs. State of M.P., I.L.R. (2019) M.P. 1994*

– Section 21 & 21-A and Panchayat (Gram Panchayat Ke Sarpanch Tatha Up Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994 – Recall of Sarpanch – Prescribed Procedure – Held – There is no prescribed specific procedure for Section 21-A – If Rules of 1994 and Rules of 1995 are applicable to Section 21, then these provisions can also be applied to Section 21-A of the Act – Authorities can take aid and support of the procedure prescribed u/S 21 of the Act as well as Rules of 1994 and Rules of 1995 which are very exhaustive – Impugned orders dropping the proceedings quashed – Petition allowed: *Sikandar Khan Mev Vs. State of M.P., I.L.R. (2018) M.P. 2419*

– Section 21-A – Recall of Sarpanch – Initiation of Proceedings – Held – If resolution is not supported by 1/3rd members of Gram Sabha, SDO may drop proceedings because as per Section 21-A of the Act of 1993, it is mandatory that motion of recall shall not be initiated, unless notice is signed by 1/3rd members of Gram Sabha and presented to prescribed authority: *Sikandar Khan Mev Vs. State of M.P., I.L.R. (2018) M.P. 2419*

– Section 21(3) – Second No Confidence Motion – Maintainability – First No Confidence Motion initiated against petitioner which was not decided by the authority

and during the pendency second No Confidence Motion was initiated and was entertained and impugned order was passed – Challenge to – Held – The first No confidence Motion was initiated before completion of 2 ½ years from the date Sarpanch entered her office which was not tenable and at the same time was not rejected by the competent authority – Second No Confidence Motion was initiated after 2½ years which was maintainable because previous motion was not rejected – Clauses of Section 21(3) is not attracted because the prohibition of submission of another motion is applicable when previous no confidence motion was rejected – Further held – If meaning of statute is plain and unambiguous, it should be given effect to irrespective of consequences – Each word, phrase or sentence is to be construed in the light of general purpose of the Act itself: *Sunita Bai Chaudhary (Smt.) Vs. Omkar Singh, I.L.R. (2018) M.P. *38*

– Section 21(4) and Panchayats (Appeal and Revision) Rules, M.P. 1995, Rule 3(da) – Reference, Revision & Appeal – Maintainability – Competent Authority – Held – Appeal filed u/S 21(4) against a No Confidence Motion whereby Addl. Collector allowed the same – Challenge to – Held – Section 21(4) talks about "Reference" whereas Rules of 1995 are confined to "appeals and revisions", where vide amendment, inserted Rule 3(da) clarify that Addl. Collector shall have no power to hear appeal – No such amendment in Section 21(4) of the Act of 1993 – Mere wrong quoting of provision or mentioning of wrong nomenclature in proceeding will not make it as illegal or without jurisdiction – Reference u/S 21(4) is maintainable and Addl. Collector rightly exercised its jurisdiction – Petition dismissed: *Jai Prasad Uikey Vs. State of M.P., I.L.R. (2018) M.P. 2748*

– Section 21(4) and Panchayats (Appeal and Revision) Rules, M.P. 1995, Rule 5 – No Confidence Motion – Appeal at Interim Stage – Maintainability – Held – Appeal u/S 21(4) of the Adhiniyam is available only when motion of no-confidence has already been carried out and not on any previous stage – Any other interpretation of this provision would render it otiose – Appeal filed by petitioner before the Collector in respect of an interim stage was not maintainable – Commissioner rightly invoked powers under Rule 5 of the Rule of 1995 which enables him to look into the legality and propriety of any order passed by subordinate officer – Petition dismissed: *Punuwa Ahirwar Vs. State of M.P., I.L.R. (2018) M.P. *46*

– Section 21(4) and Panchayat (Gram Panchayat Ke Sarpanch Tatha Up Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, M.P., 1994 – No Confidence Motion – Voting – Held – The mark (–) cannot be treated as () or (x) – Further, the mark (–) does not reflect the intention of voter to support the No Confidence Motion – If a statute requires a thing to be done in a particular manner, it has to be done in the same manner

and other methods are forbidden – Decision of Addl. Collector is in consonance with Rule 5 of the Rules of 1994: *Jai Prasad Uikey Vs. State of M.P., I.L.R. (2018) M.P. 2748*

– Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Competent Authority – Held – U/S 30 of 1993 Adhiniyam, power is vested with the State Government – Vide notification, power was conferred on Commissioner – Thus, for Jila Panchayat, Commissioner has been designated as competent authority: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 881 (DB)*

– Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Objections – Opportunity of Hearing – Held – Till it is established that objections were not invited and no hearing was provided to objectors, order of delimitation cannot be interfered with, especially in absence of any allegation of malafide – In instant case, record shows that objections were invited and after considering the same, order has been passed – No allegation of malafide or prejudice – No illegality in impugned notification – Petition dismissed: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 881 (DB)*

– Section 36 – Election of Sarpanch – Challenge to – Locus – Aggrieved Person – Applicability of Section 36 – Respondent No. 3 (R-3) elected as Sarpanch – Petitioner filed application u/S 36 of the Adhiniyam on the ground that the said post was reserved for OBC candidate and R-3 used a forged OBC certificate for the election – Application rejected on ground of jurisdiction – Challenge to – Held – Regarding locus of petitioner, it is unrebutted contentions of R-3 that petitioner is neither a resident of concerned Gram Panchayat nor was a contestant in election nor is a member of OBC category – Petitioner cannot be considered to be an aggrieved person having any locus in the matter – Further held – There is no such allegation by any of competent authority that the caste certificate issued by Respondent No. 2 is not valid and unless such declaration is made, it cannot be considered that there is any concealment on part of Respondent No. 3 – Petition dismissed on count of locus as well as non-applicability of Section 36 of the Adhiniyam: *Kalicharan Vaidh Vs. State of M.P., I.L.R. (2018) M.P. 1674*

– Section 36 & 122 – Removal of Sarpanch – Grounds – Jurisdiction – Limitation – Held – Perusal of complaint reveals that it refers to suppression of certain information regarding number of family members viz. names of daughters who are married and also the land lying in name of petitioner and her family members in the form submitted by petitioner at the time of election – None of these grounds are enumerated in Section 36 of the Adhiniyam – Collector has no jurisdiction to entertain an application purported to be u/S 36 of the Adhiniyam when none of the grounds mentioned in the said section were available to the respondents – Further held – Section 122 itself provides for limitation for filing of election petition within

thirty days from the date when elections are notified – Invoking the provisions of Section 122 in a proceedings u/S 36 of the Adhiniyam is palpably illegal – It is trite law that whatever is prohibited by law to be done directly, cannot be allowed to be done indirectly – Order passed by Collector invoking powers u/S 122 of the Adhiniyam and the order passed by SDO is unsustainable in the eyes of law and is hereby quashed – Petitioner's disqualification is set aside – Writ Petition allowed: *Badi Bahu Lodhi (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 418*

– Section 36(1)(A)(ii) – Election – Disqualification – Term "Release" – Held – Term "release" would mean where the convict is released after undergoing the entire sentence – Temporary release on bail would not fall within the domain of Section 36(1)(a)(ii) of the Act – Appellant was not eligible to contest the elections – Appeal dismissed: *Abdul Hakeem Khan @ Pappu Bhai Vs. State of M.P., I.L.R. (2020) M.P. 1281 (DB)*

– Section 39 – See – Constitution – Article 226/227: *Choti Patel (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *89*

– Section 39(1) – Prescribed Authority – Powers – Held – If power is conferred with prescribed authority, as per Adhiniyam, he alone is entitled to pass the order – Even his superior authority cannot direct him to act in a particular manner, moreso when discretion has been exercised in a judicious manner: *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 39(1) – Suspension – FIR lodged against appellant in 1993, thereafter he has been elected on two occasions as office bearer, thus prescribed authority rightly opined that it will not be justifiable to place appellant under suspension – Single Judge erred in dismissing the writ petition – Impugned orders set aside – Appeal allowed: *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 39(1) – Suspension Order – Held – Petitioner completed his term in January 2020 – It is admitted that even if appellant contests next election and is again elected, he will be required to be placed under suspension again – Since order of suspension has a drastic and recurring effect, this appeal cannot be treated as infructuous: *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 39(1) – Term "May"; "Shall" & "Must" – Held – The expression "may" used in Section 39(1) cannot be read as "shall" or "must": *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 39(4) – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1): *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 40 – Removal of Sarpanch – Enquiry – On a complaint against petitioner, SDO directed CEO to investigate the matter and submit enquiry report – As per report, irregularities found against petitioner – Show cause notice issued whereby petitioner filed reply, which was not found satisfactory resulting in his removal – Held – Before passing order u/S 40, enquiry is necessary – Such enquiry does not mean issuance of show cause notice, but requires a detail enquiry where office bearer must be given opportunity to examine and cross examine the witnesses – No such enquiry conducted by SDO – Impugned order of removal quashed – Petition allowed: *Vikram Singh Vs. State of M.P., I.L.R. (2019) M.P. *13*

– Section 40(1) – Directory/Mandatory Provisions – Show cause notice was served to petitioner (Sarpanch) on 14.06.2016, whereby reply was filed by him but final order was not passed by the Authority – Petitioner filed application to drop the proceedings, which was dismissed – Challenge to – Held – Second proviso to Section 40(1) of the Adhiniyam has prescribed the time limit to conclude the enquiry and to pass a final order – Replacing the time limit to pass order within ninety days from the date of show cause notice, using the words "shall pass the orders within ninety days" and limiting the extension of time using the words "shall not be more than 30 days" made the proviso mandatory – Order passed by CEO rejecting petitioner's application for dropping the proceedings is hereby set aside – Petition allowed: *Rajesh Barkade Vs. State of M.P., I.L.R. (2018) M.P. 1082*

– Section 40(1)(b) – Period of Completion of Inquiry – Mandatory or Directory – Held – There is no consequence provided in Statute that in case of non-completion of inquiry within the period prescribed, inquiry will stand abated – Inquiry against an elected representative cannot be set at naught only for reason that it has not been completed within the time mentioned in proviso – Failure to complete inquiry within prescribed time will not confer any advantage to the member who is facing inquiry – Conduct of inquiry is a quasi-judicial function – Provision would be treated as directory and not mandatory: *Om Kar Mahole Vs. State of M.P., I.L.R. (2018) M.P. 2792 (FB)*

– Section 40(1)(b) – Word "shall" – Interpretation – Held – The use of word "shall" is not determinative of the fact whether the proviso is mandatory – Such provision is not to make the inquiry proceedings redundant if the inquiry is not completed within period prescribed so as to allow the elected member to go scot free: *Om Kar Mahole Vs. State of M.P., I.L.R. (2018) M.P. 2792 (FB)*

– Section 40(1)(c) – Order of Removal – Show Cause Notice – Period of Limitation – Held – Order of removal passed beyond the period of 90 days from the date of issuance of show cause notice is without jurisdiction and is liable to be quashed – In provision to Section 40(1)(c), period of 90 days has to be counted from date of

issuance of the first show cause notice and not from the date of issuance of any other subsequent notices – In the instant case, authority erred in counting period of 90 days from date of issuance of second show cause notice which was issued in the same proceedings – Impugned orders quashed – Petition allowed: *Aradhana Mahobiya (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1611*

– Section 69 – Appointment – Relative – "Uncle" – "Uncle" does not come under the definition of a relative as defined under Section 69 of the Act of 1993 and there is no prohibition in the statute that candidature of any candidate can be rejected if his close relative, i.e. "Uncle" was an officer of Gram Panchayat: *Narendra Kumar Vs. State of M.P., I.L.R. (2017) M.P. 277 (DB)*

– Section 69 & 86 – Appointment of Panchayat Karmi – Held – Since petitioner was brother of Sarpanch of Gram Panchayat, he was not entitled to be appointed on the post of Panchayat Karmi/Secretary – Notification of Collector is contrary to mandatory provisions of second proviso to Section 69(1) of Adhiniyam – Appointment of petitioner was rightly set aside – Petition dismissed: *Keshav Singh Vs. State of M.P., I.L.R. (2020) M.P. 67*

– Section 69(1) & 70 – Appeal – Authorization – Held – For filing an appeal in an individual capacity, no authorization by concerning Gram panchayat was required, it is only required when appeal has been filed by the Gram Panchayat – Appeal has been filed in personal capacity and not on behalf of Gram Panchayat and is thus maintainable: *Keshav Singh Vs. State of M.P., I.L.R. (2020) M.P. 67*

– Section 69(1) & 70 and Panchayat Karmi Yojna – Scope & Applicability – Held – Panchayat Karmi Yojna issued u/S 70 of Adhiniyam is not notified in Gazette and thus not a Rule – Executive instruction cannot override statutory provisions – Absence of a provision that relative of office bearer cannot participate in recruitment process, in the said Yojna does not mean that any relative of panchayat karmi can apply for post of panchayat karmi: *Keshav Singh Vs. State of M.P., I.L.R. (2020) M.P. 67*

– Sections 69(1), 70 & 86(2) – Appeal – Locus Standi – Held – Appointment of petitioner not made by Gram Panchayat but by the CEO Janpad Panchayat – Respondent No. 6 (Up-Sarpanch of Gram Panchayat) never participated in recruitment process at any stage, thus had locus to file appeal: *Keshav Singh Vs. State of M.P., I.L.R. (2020) M.P. 67*

– Section 85 & 91 – Provision of Appeal – Petition against an order of Additional Collector passed in an appeal, whereby resolution passed by Janpad Panchayat was quashed – Held – Appeal against a resolution of Panchayat is not maintainable u/S 91 of the Adhiniyam and the Rules framed there under but the same

can be statutorily assailed u/S 85 of the Adhiniyam before the Prescribed Authority, who in the present case is Collector – Further held, order passed by the Additional Collector is held to be an order of suspension passed u/S 85(1) of the Adhiniyam, as Section 85(1) does not confer any power to the prescribed authority to quash a resolution – Additional Collector directed to take steps u/S 85(2) of the Adhiniyam and forward the matter to the State Government for final adjudication – Petition Disposed: *Machhali Udyog Sahakari Samiti Maryadit Vs. State of M.P., I.L.R. (2017) M.P. 555*

– Sections 85(1) & 85(2) – 'Panchayat Karmi' – Selection – Resolution – Gram Panchayat – Appellant appointed on the post of Panchayat Karmi – Complaint by Respondent no. 4 – SDO suspended the resolution passed by Gram Panchayat, and directed to appoint respondent no. 4 – Writ Court remanded back the matter to Gram Panchayat for re-screening the applications and for preparation of fresh merit list and for selection accordingly – Held – Selection for the post of Panchayat Karmi was not done on merits, so the order of the writ court remanding back the matter for fresh consideration was right & proper – Appeal dismissed: *Narendra Kumar Vs. State of M.P., I.L.R. (2017) M.P. 277 (DB)*

– Section 85(1) & 85(2) – Power of Collector – Under Section 85(1), powers of the Collector is confined and limited only to suspending the resolution and thereafter forwarding the matter to the State Government or the nominated officer within 10 days for final adjudication u/S 85(2) of the Adhiniyam: *Machhali Udyog Sahakari Samiti Maryadit Vs. State of M.P., I.L.R. (2017) M.P. 555*

– Sections 85(1) & 91 – 'Panchayat Karmi' – Selection – Resolution – Gram Panchayat – SDO setting aside resolution suo motu – Objection – Whether resolution can be suspended u/S 85 (1) of the Act of 1993 or appeal u/S 91 of the Act of 1993 is to be preferred – Held – The question of appeal u/S 91 of the Act of 1993 is not involved in the present case as the SDO has exercised suo motu power u/S 85 (1) of the Act of 1993 to suspend the resolution: *Narendra Kumar Vs. State of M.P., I.L.R. (2017) M.P. 277 (DB)*

– Sections 86 & 95 – See – Service Law: *Komal Kumar Kanjoliya Vs. State of M.P., I.L.R. (2016) M.P. 2258*

– Section 86(2) – Appointment – Advertisement – Held – Record shows that advertisement was issued before appointment of petitioner – After following due process and preparation of merit list, petitioner was appointed on the post of Panchayat Secretary – Respondents admitted the fact of issuance of advertisement and preparation of panchnama – Impugned order set aside – Petition allowed: *Balbeer Singh Lodhi Vs. State of M.P., I.L.R. (2019) M.P. 1994*

– Section 92 – Recovery Proceedings – Opportunity of Hearing – In respect of improper utilization of the sanctioned amount for construction of APL and BPL toilets, proceedings u/S 92 of the Act of 1993 was drawn by the SDO against appellants, who are the elected Sarpanch – Held – Without any adjudication, recovery was directed to be made and further for not depositing the amount, warrant was also issued – As per Section 92 of the Act, competent authority was under obligation to decide the reply/objection of petitioner and to afford reasonable opportunity to the person concerned – In the present case, proceedings are patently contrary to the provisions – Action of recovery without affording opportunity to petitioner is vitiated in the eyes of law – Order of recovery is set aside – Appeals disposed of: *Nani Invati (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 867 (DB)*

– Section 92 and Criminal Procedure Code, 1973 (2 of 1974), Sections 173(2), 202 & 204 – FIR against the petitioner in respect of the financial irregularities committed by the petitioner while posted as Panchayat Secretary, Gram Panchayat – It is urged that in case the petitioner was granted the opportunity of hearing, he could have explained that no offence is made out – Held – Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer – No interference – Petition dismissed: *Bholaram Sarwe Vs. State of M.P., I.L.R. (2016) M.P. 2482*

– Section 122 – Election Petition – Recounting of Votes – Petitioner elected as a Sarpanch by margin of one votes – Election petition filed by respondent No.1 whereby prescribed authority issued direction for recounting of votes – Challenge to – Held – Prescribed authority instead of dwelling upon the allegations made in election petition, without formulating issues directed for recounting – No material evidence nor any findings that 20 votes were wrongly rejected – Prescribed authority not justified in directing recounting of votes merely because respondent No.1 lost by a margin of one vote – Petition allowed: *Manvati Pandey (Smt.) Vs. Smt. Indira Chaturvedi, I.L.R. (2017) M.P. *104*

– Section 122 – Recounting of Votes – Scope & Grounds – Order of recounting for a margin of one vote – Held – This Court earlier concluded that small margin of votes cannot be a ground for recounting in absence of specific pleadings regarding irregularity – Apex Court concluded that, order of recounting cannot be passed as a matter of course – Petitioner failed to establish a ground for recounting by specific pleading of material evidence and particulars supported by contemporaneous evidence – Appeal dismissed: *Purushottam Sahu Vs. Devkinandan Dubey, I.L.R. (2019) M.P. 2243 (DB)*

– Section 122 and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rules 3(2) & 8 – Objection filed by petitioner before Election Tribunal in election petition filed by respondent no. 1 that copy of election petition alongwith list of documents supplied to the petitioner was not authenticated by respondent no. 1 was rejected, hence this writ petition – Held – Requirement is to have authentication by the original signature of the election petitioner – Supplying the photocopy containing copy of impression of the signature instead of original signature cannot be treated to be a substantial compliance of the provision – There is non-compliance of Rule 3(2) of Rule 1995, therefore mandatory provision contained in Rule 8 is attracted entailing the dismissal of election petition – Order of trial Court set aside and election petition filed by respondent no. 1 dismissed: *Laxmi (Smt.) Vs. Beena (Smt.), I.L.R. (2017) M.P. 88*

– Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rules 72, 77 & 81 – Election Petition – Alternate Remedy – Petitioner declared elected as Sarpanch by four votes – After declaration of result, ransacking of ballot boxes – Returning officer reported to State Election Commission whereby order directing re-poll was issued – After re-polling, respondent no.6 was declared elected – Challenge to – Held – As per Rule 72 of the Rules of 1995, re-polling can only be directed when ballot boxes are destroyed before the declaration of result under Rule 81 is made – In the present case, returning Officer has not declared the result under Rule 81, therefore it cannot be said that petitioner was declared as elected – Petitioner having alternate remedy of election petition u/S 122 of the Act of 1993 – Petition dismissed: *Sandhaya Mihilal Rai (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 1832*

– Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 – Election of Sarpanch – Recounting – Grounds – Delegation of Power – Petitioner and respondent No. 5 (R-5) secured equal number of votes – Lottery system was adopted whereby petitioner was declared as elected Sarpanch – Election petition by R-5 whereby order of recounting was passed and resultantly R-5 was declared as elected Sarpanch – Challenge to – Held – In application before Presiding Officer, R-5 did not stated any material facts or circumstances which required recounting – This Court in an earlier petition directed SDO to recount the votes himself but it seems that SDO delegated the power of recounting to Tehsildar, which is not permissible – Election Tribunal has gone beyond the pleadings and ordered for recounting for entire votes, although pleadings, evidence and prayer was made for only two votes – Further, R-5 never filed any objection during counting as required under Rule 80 of the Rules of 1995 – Impugned orders set aside – Petition allowed: *Balwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 1150*

– Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 – Election Petition – Burden of Proof – Held – In the present case, Election Tribunal has placed the burden of proof on the petitioner (herein) which is contrary to the earlier judgments of this Court – Burden of proof lies on the Election Petitioner (respondent no.5): *Balwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 1150*

– Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 – Election Petition – Recounting of Votes – Held – Recounting can be ordered only if clear pleadings exists in respect of illegality or irregularity done while counting which should be prima facie established – Recounting cannot be done in routine manner – SDO passed final order declaring respondent No. 4 elected on basis of the recount, which was already set aside by this Court in earlier round of litigation – Further, SDO did not examined the compliance of mandatory provisions of Rules of 1995 – Impugned order set aside – SDO directed to decide the election petition afresh – Petition allowed: *Aarya Maansingh Vs. State of M.P., I.L.R. (2018) M.P. 2860*

– Section 122 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Recounting – Application – Held – Even if an application seeking recounting is not preferred on the date of counting, Tribunal/ Court has the jurisdiction/ authority to direct recounting: *Devki Nandan Dubey Vs. Purshottam Sahu, I.L.R. (2019) M.P. 316*

– Section 122 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Recounting – Grounds – Petitioner elected by margin of one vote – R-1 filed election petition whereby Tribunal ordered recounting where he was declared elected – Held – R-1's application seeking recounting is ambiguous which does not contain any specific allegation, factual details and nature of irregularity – Recounting was ordered on basis of irregularity which was neither pleaded nor proved by R-1, thus he failed to establish the grounds for recounting – Victory by margin of one vote cannot be a ground for recounting – Further, Tribunal travelled beyond the scope of pleading and evidence while directing recounting on basis of roving inquiry which is impermissible – Impugned order set aside – Petition allowed: *Devki Nandan Dubey Vs. Purshottam Sahu, I.L.R. (2019) M.P. 316*

PANCHAYAT SAMVIDA SHALA SHIKSHAK (APPOINTMENT AND CONDITIONS OF SERVICE) RULES, M.P., 2001

– See – Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008: *Vinod Rathore Vs. State of M.P., I.L.R. (2017) M.P. 823*

PANCHAYAT SAMVIDA SHALA SHIKSHAK (EMPLOYMENT AND CONDITIONS OF CONTRACT) NIYAM, M.P., 2005

– See – Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008: *Vinod Rathore Vs. State of M.P., I.L.R. (2017) M.P. 823*

PANCHAYAT SERVICE (DISCIPLINE AND APPEAL) RULES, M.P., 1999

– Rule 7 – Suspension – Opportunity of hearing – Criminal Case – Suspension of the Gram Panchayat Secretary – No prior notice or opportunity of hearing before suspension of the Gram Panchayat Secretary or for that matter withdrawal (de-notified) of such charge given to the Panchayat Karmi, is required to be given by the Competent Authority to the Concerned employee much less who is facing serious criminal case: *Chandrapal Yadav Vs. State of M.P., I.L.R. (2016) M.P. 2425 (FB)*

PANCHAYAT SERVICE (GRAM PANCHAYAT SECRETARY RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 2011

– Rule 6 sub-Rule (7) – Transfer of Secretary of the Gram Panchayat – First part of sub-Rule (7) specifies that transfer of Secretary can be effected on administrative ground and not limited to neighbouring Gram Panchayat – Held – As the transfer of the Secretary has been done on administrative ground so, first part of sub-Rule (7) will come into play and second part of sub-Rule (7) will not be applicable as it operates when an application is made for transfer and then only the point of nearby Gram Panchayat will be examined – Order of Writ Court set aside and transfer order restored: *Gram Panchayat, Hardi Vs. Anil Dixit, I.L.R. (2016) M.P. 1262 (DB)*

– Rule 7 (amended) and General Clauses Act, M.P. 1957 (3 of 1958), Section 16 – Panchayat Secretary – Suspension/Dismissal – Competent Authority – Held – Even if there is no express provision in Rules of 2011, applying general principle of master servant relationship, the appointing authority has implicit power to place the employee under interim suspension or dismiss him – CEO being appointing authority can pass order of interim suspension of Gram Panchayat Secretary – Appeals allowed: *State of M.P. Vs. Ramesh Gir, I.L.R. (2020) M.P. 2073 (DB)*

PANCHAYAT (UP-SARPANCH, PRESIDENT AND VICE PRESIDENT) NIRVACHAN NIYAM, M.P., 1995

– Rule 3(6) – Panchayat elections – Reservation of the post of President,

Janpad Panchayat for OBC (women category) – Challenge – Violation of Rule 3(6) – Ground – Seat reserved for a particular category in previous election shall not be included in the drawing lots till all remaining panchayats are not included – Whereas in this case lots not drawn from all Janpad Panchayat but from two Panchayats only – Held – In the instant case all Panchayats by rotation have been reserved for OBC category except Nateran which has been reserved for OBC category in the instant election and the concerned Janpad Panchayat, Basoda has been reserved for OBC category for the first time in 1994, so drawing lots between two Panchayats, Basoda & Vidisha and in turn reserving Basoda constituency for OBC, women category is not at all arbitrary or in violation of Rule 3(6) of the Rules of 1995 – Writ Petition dismissed: *Prahlad Singh Raghuvanshi Vs. State of M.P., I.L.R. (2016) M.P. 2452*

PARTNERSHIP ACT (9 OF 1932)

– Legal Entity – Held – Even if partners in their individual capacity have participated in main proceedings, it is sufficient because partnership firm does not have any legal entity or personality: *Krupa Associates (M/s.) Vs. M/s. Prism Infra Project, I.L.R. (2019) M.P. 1848*

– Section 4 – Held – Partnership firm is not a legal entity – Firm's name is a mere expression and only a compendious name given to partnership – Partners are the real owners of assets and partnership property belongs to all partners constituting the firm: *Ramesh Joshi Vs. The Government of M.P., I.L.R. (2019) M.P. 2281*

– Section 42(c) – Applicability – Provisions of Section 42(c) does not confer any immunity from criminal prosecution where for legal purposes, the firm is dissolved but for deriving any unlawful benefit, the firm is shown to be in existence: *Omprakash Gupta Vs. State of M.P., I.L.R. (2018) M.P. 603*

– Section 69(2) – See – Civil Procedure Code, 1908, Order 30 Rule 1: *Vijay Kumar Vs. M/s. Shriram Industries, I.L.R. (2017) M.P. 937*

– Section 69(2) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Maintainability of Suit – Revision against dismissal of application filed by petitioner/ defendant under Order 7 Rule 11 CPC – Held – It is pleaded in plaint that agreement is in nature of Partnership deed – It is also admitted that such partnership deed is not registered, thus as per Section 69 of the Act of 1932, suit based on such unregistered partnership deed is not maintainable – Application under order 7 Rule 11 CPC allowed – Suit dismissed – Petition allowed: *Nirmala Devi (Smt.) Vs. Smt. Bharti Devi, I.L.R. (2017) M.P. *129*

– Section 69(2) & 69(3) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Maintainability of Suit – Scope and Applicability – Respondent/Plaintiff

filed a suit for declaration and dividend –Applicant/defendant filed application under Order 7 Rule 11 C.P.C. on the ground that partnership firm was not registered and hence suit was not maintainable – Trial Court dismissed the application – Challenge to – Held – There is an inter se dispute between partners of firm – Plaintiff demanded accounts and share in dividend from another partner of firm, therefore registration of firm is not necessary – Present case will fall u/S 69(3) of the Act of 1932 – Suit is maintainable – Further held – Application under Order 7 Rule 11 C.P.C. shall be decided on the basis of pleading in the plaint alone – No error in the impugned order – Revision dismissed: *Abdul Saleem Vs. Shamim Ahmed, I.L.R. (2017) M.P. 1485*

PASSPORTS ACT (15 OF 1967)

– Section 10(3)(e) & 10(5) and Penal Code (45 of 1860), Section 498-A & 406 – Impounding of Passport – On the ground of pendency of a criminal case against the petitioner, order impounding his passport was passed by the respondent authority – Challenge to – Held – Mere pendency of a criminal case in a Court may be a cause to the Passport Officer to initiate action u/S 10(3)(e) of the Act of 1967 but it cannot be treated to a reason for impounding of the passport until the accused in a criminal case has been convicted by a competent Court – Further held – As and when the Passport Officer has to take action in exercise of the powers u/S 10(3)(e) of the Act of 1967, he ought to understand the nature of the criminal case pending against the person – In the instant case, bhabhi of the petitioner filed a case u/S 498-A and 406 IPC for demand of dowry arraying all family members as accused – Mere registration of a criminal case of demand of dowry is not sufficient to pass the order of impounding the passport without considering all the aspects and without assigning the cogent reasons – Impugned order quashed: *Navin Kumar Sonkar Vs. Union of India, I.L.R. (2018) M.P. 677*

PAY REVISION RULES, M.P., 2009

– See – Service Law: *Jayanti Vyas (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 673*

PAYMENT OF GRATUITY ACT (39 OF 1972)

– Object – To provide for scheme for payment of gratuity etc. to ensure the welfare of the workmen working in the country – It is a beneficial piece of legislation for the workmen working throughout the country: *Grasim Industries Ltd. Vs. Duley Singh, I.L.R. (2017) M.P. *19*

– Section 2(e) – "Employee" – Held – It does not include any such persons who holds a post under the Central or State Government and is governed by any

other Act or Rules: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

– Section 2(e) & 14 – See – Service Law: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

– Section 2(f) & 2(i) – See – Constitution – Article 226: *Ramjilal Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1850*

– Section 7(7) – Maintainability of appeal – While preferring an appeal the petitioner company has not deposited the gratuity amount along with interest component therefore the appeal itself is not maintainable: *Grasim Industries Ltd. Vs. Duley Singh, I.L.R. (2017) M.P. *19*

– Section 14 – Held – No executive instructions, orders or rule can take away the rights flowing from Gratuity Act in view of the overriding effect given to the Act u/S 14: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

PAYMENT OF WAGES ACT (4 OF 1936)

– Section 15(2) & 17(1A), Workmen's Compensation Act (8 of 1923), Section 30(1) and Civil Procedure Code (5 of 1908), Order 9 Rule 13 – Arrears of wages – Deposit of amount – Mandatory condition – Appeals – No appeal under Clause (a) of sub-section 1 of Section 17 shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against – Pre-condition of deposit the amount and filing the certificate of authority along with the memorandum of appeal disclosing that the amount has been deposited is a mandatory condition, without there being any power to relax or waive the requirement of pre-deposit – Amount not deposited – Appeal rightly dismissed: *Saabir & Brothers Vs. Rajesh Sen, I.L.R. (2016) M.P. 786*

PENAL CODE (45 OF 1860)

– Section 11 – See – Criminal Procedure Code, 1973, Section 438: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

– Section 21 – Public Servant – Held – Definition of Public Servant u/ S 21 of IPC is very wide – Clause ninth of the definition will take within its fold even a Manager of the Cooperative Society entrusted with goods in the form of the property on behalf of the Government to distribute to a particular section of the society for which the Government is providing subsidy: *Jagdish Korku Vs. State of M.P., I.L.R. (2016) M.P. 2418*

– Section 26 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 34 – Common Intention – Determination – Held – Existence or non-existence of common intention amongst accused has to be determined cumulatively from their conduct and behaviour in the facts and circumstances of each case – There can be no straight jacket formula – Absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention: *Rajkishore Purohit Vs. State of M.P., I.L.R. (2017) M.P. 2299 (SC)*

– Section 34 – Common Intention – Held – It is settled law that common intention can develop during course of occurrence but there has to be cogent material on the basis of which Court can arrive at that finding and hold an accused vicariously liable for the act of other accused u/S 34 IPC: *Sanju @ Sanjay Vs. State of M.P., I.L.R. (2017) M.P. 2470 (DB)*

– Section 34 – Common Intention – Held – Section 34 lays down a principle of joint liability in a criminal act but mere participation in crime with others is not sufficient to attribute common intention – It is absolutely necessary that intention of each one of the accused should be known to the rest of the accused: *Chhota Ahirwar Vs. State of M.P., I.L.R. (2020) M.P. 1050 (SC)*

– Section 34 – Held – Principle of law is that applicability of Section 34 IPC is a question of fact and is to be asserted from the evidence on record – Common intention postulates existence of prearranged plan and that must mean a prior meeting of minds – In the present case, incident took place all of a sudden on the issue of grazing of ox – Name of appellant no.2 has not been mentioned in FIR and in such circumstances, she could not be convicted for commission of offence of murder with aid of section 34 IPC: *Bhure Singh Vs. State of M.P., I.L.R. (2018) M.P. 929 (DB)*

– Sections 34, 304-B & 498-A – Common Intention – Held – Although husband and both sister-in-law did not rescue the deceased from mother-in-law, but that does not mean that they had any common intention to harass her or to kill her: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

– Section 40 & 41 and Prevention of Corruption Act (49 of 1988), Section 13 – "Offence" & "Special Law" – Held – As per Section 40, the word "Offence" means a thing punishable under the IPC or under any special or local law as hereinafter defined – In Section 41, a special law has been defined as "a law applicable to a particular subject" – Conjoint reading of Section 40 & 41 IPC would show that the Prevention of Corruption Act would be a "special law" – Thus, offence under the

IPC for which petitioners are being tried also becomes punishable under the Prevention of Corruption Act which is a special enactment for that purpose: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

– Section 43 & 268 – Term "Illegal" – Held – It is not sufficient that an act must be right or wrong applying standards of contemporary social morality – Act must be wrong in the eyes of law – Term 'Unlawful' and 'Illegal' – Discussed and explained: *Shashimani Mishra Vs. State of M.P., I.L.R. (2019) M.P. 1397*

– Section 53 – Rarest of Rare Cases – Circumstances against the accused – Accused being near relative of the deceased, who was a minor girl of about 8 years, committed rape and thereby committed her death – Injury to the deceased whereby the uterus was almost smashed like vegetable and perineal tear show the gruesome manner of the offence – Held – Such cruelty towards a young child is appalling – The act of the accused was monstrous and invited extreme indignation of the community and shocked the collective conscious of the society – The case falls within the rarest of the rare category: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Section 64 – Sentence for Non-payment of Fine – Held – Fine amount of Rs. 1,00,000/- imposed and in default 2 years R.I. – Fine amount has not been deposited by the appellants – Sentence reduced to the extent of 6 months: *Bhupendra Singh Vs. Government of India, I.L.R. (2018) M.P. 1183*

– Section 82 – Accused is alleged to have executed a sale deed fraudulently when he was four years of age through his father – Police authorities have registered a case under Sections 420, 467, 468, 471, 34 of I.P.C. against the applicant and his father – Father is no more – Applicant has not signed the sale deed – Criminal proceedings are not maintainable against the accused by virtue of Section 82 of I.P.C., as he was only 4 years of age at the relevant point of time – F.I.R. quashed under Section 482 of Cr.P.C: *Prithviraj Singh Vs. State of M.P., I.L.R. (2016) M.P. 2859*

– Section 84 & 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Murder – Plea of Unsoundness of Mind – Proof – Examination of Accused – Held – After assaulting deceased, appellant ran away from spot, not only crossed the hill but also jumped in the reservoir to evade arrest – He also tried to wash his blood stained clothes, trying to obliterate the evidence of crime – Cannot be said to be a person of unsound mind at the time of incident – Plea of unsoundness of mind needs to be specifically taken and proved – Appellant has not examined any witness in this regard nor even made a mention in his examination u/S 313 Cr.P.C. about such illness – Not eligible for protection u/S 84 IPC: *Ramsujan Kol @ Munda Vs. State of M.P., I.L.R. (2017) M.P. *110 (DB)*

– Section 84 & 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 328 & 329 – Conviction – Appreciation of Evidence – Plea of Lunacy – Held – Enquiry report called from jail authorities shows that appellant was behaving like normal person in jail – He also behaved practically normal during trial – No medical evidence of any long drawn treatment of appellant to establish lunacy – Plea of lunacy cannot be taken as the cloak to absolve from criminal liability in a routine manner – Procedure u/S 328 & 329 Cr.P.C. is to be followed and enquiry should be made in specific terms – No benefit can be granted u/S 84 IPC – Appeal in respect of conviction dismissed: *Girijashankar Vs. State of M.P., I.L.R. (2018) M.P. 2946 (DB)*

– Sections 84, 302, 307 & 309 and Criminal Procedure Code, 1973 (2 of 1974), Section 329– Murder – Conviction – Plea of Insanity – Burden of Proof – Appreciation of Evidence – Appellant killing his two minor children and inflicted injuries to wife – Held – Prosecution witnesses specifically stated that appellant was of unsound mind and committed offence because of insanity and these witnesses were not declared hostile – Non-filing of documents of medical treatment of appellant prior to incident is not fatal in light of subsequent mental condition – Trial remained stayed for 10 yrs. u/S 329 Cr.P.C. as appellant was not able to enter his defence because of unsound mind – Appellant succeeded in proving his defence and is entitled for benefit u/S 84 IPC – Appellant acquitted of the charge u/S 302 & 307– Appeal allowed: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Sections 84, 302 & 324 – Murder – Conviction – Life Imprisonment – Plea of Insanity – Appellant came to the house armed with tangi/axe and inflicted blow on head of his parental aunt /Bua as a result she died on spot – Appellant ran away from the spot and when his elder brother tried to stop him, he inflicted injuries to him – Held – Testimony of eye witnesses and other prosecution witnesses is duly supported by medical evidence – Most of the witnesses are not only relative of deceased but they are also relatives of appellant – Independent eye witness also supported the prosecution story – Prosecution story seems to be trustworthy and credible – Further held – All the eye witnesses clearly stated that appellant was insane and mentally unfit at the time of incident – It is also on record that appellant had no intention to kill the deceased – From evidence of prosecution witnesses on record, it is considered and found that at the time of incident, appellant was absolutely insane and of unsound mind – For committing a crime, the intention and act both are taken to be the constituents of crime – Appellant entitled to benefit of Section 84 IPC – Conviction and sentence set aside – Appeal allowed: *Ramnath Pav Vs. State of M.P., I.L.R. (2018) M.P. 943 (DB)*

– Sections 84, 323 & 302 – Insanity – Appreciation of Evidence – Held – Trial Court has recorded a finding that from perusal of evidence, it appears that

mental condition of accused is not completely good – Evidence of prosecution witnesses goes to show that accused was insane and was treated at Mental Hospital, Gwalior – In absence of any evidence in rebuttal while the burden of proof was on prosecution, trial Court ought to have extended the benefit of provisions of Section 84 IPC to appellant – Appeal allowed: *Ramkripal @ Kripal Vs. State of M.P., I.L.R. (2019) M.P. *20 (DB)*

– Section 85 – Intoxication as defence – When the act of drinking is purely his own act – Such person cannot be given benefit – Such person cannot be permitted to take advantage of his own wrong – Unless the administration of intoxicant substance is proved without his knowledge: *Siyadeen @ Bhakada Kol Vs. State of M.P., I.L.R. (2018) M.P. *67 (DB)*

– Section 85 & 86 – Intoxication – Defence – Burden lies upon the accused – To show that the incapability/incapacity of the accused was because of intoxication, and it is of such a degree where he can claim the benefit: *Siyadeen @ Bhakada Kol Vs. State of M.P., I.L.R. (2018) M.P. *67 (DB)*

– Section 90 – Consent – Held – Section 90 though does not define "consent" but describes what is not "consent" – Consent may be express or implied, coerced or misguided, obtained willingly or through deceit – If consent is given by complainant under misconception of fact, it is vitiated: *Amit Kumar Vs. State of M.P., I.L.R. (2019) M.P. 2145*

– Section 90 & 376 – See – Criminal Procedure Code, 1973, Section 482: *Sharad Khare Vs. State of M.P., I.L.R. (2018) M.P. *54*

– Section 96 to 106 – See – Arms Act, 1959, Section 14: *Gajendra Singh Vs. State of M.P., I.L.R. (2020) M.P. 406*

– Section 97 – Private/Self Defence – Dispute relating to possession over land – Injuries caused to members of both the parties – Held – As the appellants assaulted the complainant party over the disputed land but has failed to prove the title on the said property and even there is no material or evidence to the effect that injuries caused to appellants were during the altercation – Plea of right to private defence is not available to appellants: *Prabhulal Vs. State of M.P., I.L.R. (2018) M.P. 782 (DB)*

– Section 107 – Instigation – Requirement – It is not necessary that use of actual words to the effect or what constitutes instigation must necessarily and specifically be suggestive of consequences – Yet a reasonable certainity to incite the consequence must be capable of being spelt out: *Hari Mohan Bijpuriya Vs. State of M.P., I.L.R. (2016) M.P. 2340*

– Section 107 – Instigation – Words uttered in a fit of anger or emotion without intending the consequences actually follow cannot be said to be instigation: *Hari Mohan Bijpuriya Vs. State of M.P., I.L.R. (2016) M.P. 2340*

– Section 107 & 306 – Abetment of Suicide – Abetment requires an active act or direct act, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such position that he/she committed suicide – In the present case, husband wife travelling in train and as per statements of the co-passengers, were not talking to each other – Wife was repeatedly going to wash room, husband use to go behind her and take her back to her berth – Wife jumped from the train and died – Alleged harassment by quarrelling is not such that it should have induced her to end her life – It appears that victim was hypersensitive to ordinary petulance, discord and differences in domestic life – FIR quashed – Petition allowed: *Abhishek Mishra Vs. State of M.P., I.L.R. (2018) M.P. *1*

– Section 107 & 306 – Abetment of Suicide – Discussed and explained with case laws: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 107 & 306 – Abetment of Suicide – Held – If circumstances are extreme, in that conditions the women may commit suicide – Continuous torture may also create a mental torture and this is also a form of abetment of suicide: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 107 & 306 – Abetment of suicide – If deceased had given a love letter to a girl and thereafter he was scolded or even beaten by the shopkeepers and making a complaint to his family members about his conduct, cannot be said to be an act which may amount to instigating the deceased to commit suicide – Evidence on record shows that accused only made a telephonic call to the family members of the deceased informing them about the conduct of the deceased – It cannot be presumed that the applicant/accused in any manner instigated or abetted or provoked the deceased to commit suicide – Prima facie no case is made out against the accused/applicant u/S 306 IPC – Proceedings stand quashed – Application allowed: *Manoj Vs. State of M.P., I.L.R. (2017) M.P. *53*

– Section 107 & 306 – Abetment of Suicide – Ingredients – Husband told his wife that he will be giving divorce to her – Held – It does not constitute the ingredient of instigation within the meaning of Section 107 IPC – Words uttered in a quarrel or in the spur of moment, cannot be taken to be uttered with mens rea – Conviction and sentence set aside: *Kamrunisa Vs. State of M.P., I.L.R. (2019) M.P. *58*

– Sections 107 & 306 – Abetment of Suicide – Quashment of FIR – Deceased committed suicide due to loss of agriculture production on account of which he was unable to repay loan amount of accused - Name of the accused was mentioned

in the suicide note – Held – Accused repeatedly asking for return of his borrowed money cannot be equated to that of abetment to commit suicide as it do not amount to instigation or aiding in commission of suicide – There has to be mens rea to commit the offence – Deceased committed suicide because of constant pressure for repayment of loan which indicates that he was hypersensitive to ordinary petulance and discord – It does not constitute abetment to commit suicide – Prima facie offence u/S 306 IPC not made out – Proceedings liable to be quashed – Petition allowed: *Surendra Sharma Vs. State of M.P., I.L.R. (2018) M.P. *12*

– Section 107 & 306 – Abetment of Suicide – Revision against Charge – Suicide by husband – Suicide Note – Husband suspected extra-marital relations of wife – As a result of dispute, wife living in maternal home for long time and gave birth to twins – Wife's maternal relatives particularly brother-in-law did not allow deceased to take his wife and children back and use to misbehave with him because of which he was frustrated – Held – Husband could have moved application for restitution of conjugal rights or for judicial separation or divorce but he adopted an escapist course – Clearly an overreaction on part of deceased for which wife and brother-in-law cannot be legally held liable – Petitioners neither actively instigated the deceased to commit suicide nor did they created any such situation where he was left with no option but to commit suicide – No ground to proceed u/S 306 or 306/34 IPC – Petitioners discharged – Revision allowed: *Savita Athya (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. *76*

– Section 107 & 306 – Explanation – Link between the cause (threat, instigation, conspiracy or assisting/aiding) and suicide ought to be live and strong enough to persuade a man of ordinary prudence to be prima facie satisfied that in all probability the incident of suicide can be the outcome of threat, instigation, conspiracy or assistance/aiding extended by accused – Incident of the said cause and that of suicide should be in close proximity of time – Long time gap between the two renders the all essential link, weak: *Laxmi Bai Raghuvanshi (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1308*

– Section 107 & 306 – Grounds – Held – A victim committing suicide may have different degree of self respect and self esteem from others and may be hyper sensitive to ordinary petulances, discord remarks, abuses, threats etc which pushed him to the extent to commit suicide whereas other individuals may not react or succumb to extent of committing suicide – Unless there is apparent disconnect, allegations of abetment of suicide are required to be ascertained with help of material on record and not through argument of discrediting the allegations made in FIR: *Jaiprakash Vaishnav Vs. State of M.P., I.L.R. (2018) M.P. 3001*

– Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Revision Against Charge – Abetment to Suicide – Held – Deceased, a 17 yrs. old girl of impressionable age – Where abetment to suicide relates to person of impressionable age, the yardstick of adjudication becomes stringent – Case against applicant based upon overt acts of repeated stalking, pressurizing and abusing which on prima facie assessment, constitutes offence of abetment – Further, as per post mortem report, deceased was carrying a male fetus – Strong suspicion against applicant – Framing of charge cannot be found fault with – Revision dismissed: *Rishi Jalori Vs. State of M.P., I.L.R. (2019) M.P. *28*

– Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Abetment of Suicide – Mere refusal to return the jewellery borrowed by accused cannot be a cause to constitute an offence u/S 306 IPC – Essential ingredients of 'abetment' are absent in the instant case so as to constitute an offence punishable u/S 306 IPC – Due to absurdity of the allegation made and the fact of absence of live and proximate link between the cause and suicide, no offence u/S 306 IPC made out – Prosecution against applicant quashed – Application allowed: *Laxmi Bai Raghuvanshi (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1308*

– Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge – Delay in FIR – Complainant (son of deceased) took loan from applicant and in respect of repayment, complainant and his father was harassed whereby father of complainant committed suicide – Held – Allegations made in FIR found to be consistent with other material collected during investigation – Further, FIR was registered consequent to directions of the High Court in a writ petition and with passage of time challan has been filed and trial is in progress, thus issue of delay in FIR has no consequence – Case for framing of charge made out – Application dismissed: *Jaiprakash Vaishnav Vs. State of M.P., I.L.R. (2018) M.P. 3001*

– Section 107 & 306 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) – Abetment to Suicide – Appeal against framing of charge – Deceased, a peon committed suicide and in suicide note made allegations against appellants, who were Principal and Head master – Allegations in suicide note that appellants use to harass, abuse and were taking extra work from deceased – Held – Act of abusing and taking extra work from deceased cannot be treated as abetment to commit suicide – Appellants cannot be held responsible for suicide as there is no mens rea to abet the deceased for commission of suicide – Charges set aside – Appeal allowed: *Shama Parveen Beg Vs. State of M.P., I.L.R. (2018) M.P. 1540*

– Sections 109, 378 & 379 and Minor Mineral Rules, M.P. 1996, Rule 53 – Quashment of Criminal Proceedings – Dumpers filled with sand were seized as the

same was being transported without permit – Held – Ingredients of offences u/S 378 IPC and under Rule 53 of Rules of 1996 are quite distinct – Rule 53 deals with unauthorized extraction and transportation of minor minerals and provides for penalty in graded manner as well as seizure and confiscation of tools, machines and vehicles used whereas Section 378 IPC deals with theft of sand without consent of owner/ State – Apart from proceedings under the Rules of 1996, Court can take cognizance u/S 379 IPC for theft of sand owned by the Government – Application dismissed: *Ashish Singh Vs. State of M.P., I.L.R. (2019) M.P. 689*

– Sections 109, 417, 420 r/w 120-B – See – Prevention of Corruption Act, 1988, Sections 13(1)(d) & 13(2): *Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt, I.L.R. (2016) M.P. 599 (DB)*

– Section 115 & 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Extra Judicial Confession of Co-accused – Revision against the order framing charge against applicant u/S 115 and 120-B IPC – On basis of confessional statement of one co-accused, offence registered against applicant – Held – FIR lodged by complainant is based only on information by one of the co-accused – Mobile call details only shows that on date of incident co-accused talked with each other but only on this basis it cannot be inferred that applicant hatched conspiracy with other co-accused for murdering complainant – Confession of co-accused is no evidence at all, it is just a corroborative piece of evidence against applicant and alone cannot be used as a foundation for conviction of accused – No substantive evidence on record to frame charge against applicant – Applicant discharged – Revision allowed: *Chandar Singh Vs. State of M.P., I.L.R. (2017) M.P. *115*

– Sections 120 & 120-B – Criminal conspiracy – The prosecution must prove an agreement between two or more persons to do or cause to be done some illegal act or some act, which is not illegal by illegal means – No case of criminal conspiracy and cheating made out – Charges framed against all accused persons set aside: *Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt, I.L.R. (2016) M.P. 599 (DB)*

– Section 120(B) – When *prima facie* the document under challenge is not a forged document then the complaint could not have been registered for any offence relating to forgery either directly or with the help of Section 120(B) of IPC – Both the court below committed an error of law in not considering the caste certificate: *Harvir Singh Vs. State of M.P., I.L.R. (2017) M.P. 723*

– Section 120-B & 307 – Ingredient – Held – To constitute an offence u/S 120-B IPC, there must be an agreement between two or more persons to commit an

offence/crime and mere proof of such agreement is sufficient to establish criminal conspiracy – Further held – To constitute an offence u/S 307 IPC it is not necessary that injury capable to causing death should have been inflicted but the guilty intention or knowledge with which the act was done has to be seen – Such intention or knowledge are to be inferred from the totality of circumstances available in a given case – Trial Court rightly framed charge against applicant – Revision dismissed: *Gyanchand Jain Vs. State of M.P., I.L.R. (2018) M.P. 1793*

– Sections 120(B), 419, 420, 467, 468 & 471 – See – Criminal Procedure Code, 1973, Section 482: *Yash Vidyarthi Vs. Central Bureau of Investigation, New Delhi, I.L.R. (2016) M.P. *17*

– Sections 120-B, 420, 467, 468 & 471 – See – Prevention of Corruption Act, 1988, Sections 13(1)(d), 13(2) & 19: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

SYNOPSIS : Section 147 to 149

1. Appreciation of Evidence

– Sections 147, 148, 307/149, 323 & 324/149 – Appreciation of Evidence – Weapon of Offence – Non-recovery – Effect – Held – In the light of direct ocular evidence of injured witnesses, prosecution case cannot be disbelieved merely on ground of non-recovery of weapon of Offence – Ocular evidence fully corroborated by medical evidence – It is well established principle of law that mere non-recovery of weapon of offence would not make ocular evidence unreliable – Conviction upheld: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

2. Common Object/Unlawful Assembly

– Sections 147, 148 & 149 – Common Object & Unlawful Assembly – Held – Common object can develop even on the spot of occurrence – Just because one appellant gave axe blow to victim, it cannot be said that other appellants were not having common object or they were not members of unlawful assembly: *Ramjilal @ Munna Vs. State of M.P., I.L.R. (2020) M.P. *9*

– Sections 147, 148, 149 & 302 – Incident took place on 27/06/1997 at about 10 p.m. – Deceased was attacked with sword, 'Farsa', axe and 'lathis' – Accused seven in number – Grounds – Report u/s 157 of Cr.P.C. sent with delay to Magistrate on 30/06/1997 – None of injured eye- witness mentioned in column no. 6 of Crime Details Form, names of accused persons not there in P.M. report etc. – Held – These are minor discrepancies which do not affect the conviction of the appellants and it is sufficiently established that occurrence took place as spoken by the prosecution witnesses – Conviction upheld – Appeal dismissed: *Narender Singh Vs. State of M.P., I.L.R. (2016) M.P. 641 (SC)*

– Section 149 – Common Object – Held – Since fight broke out of sudden provocation, apart from appellant No. 1, 2 & 6 other appellants did not share common object, they were just doing agricultural work in the vicinity – Prosecution failed to prove and establish common object by these appellants making unlawful assembly to eliminate the deceased – Even in enquiry report, police official admitted that it is not possible to inflict injuries by six accused – These appellants deserve to be acquitted from charge u/S 302/149: *Raghuveer Singh Vs. State of M.P., I.L.R. (2018) M.P. 2219 (DB)*

– Section 149 – Member of unlawful assembly – Accused No. 7 armed with 12 bore gun and also fired but gun shot did not hit anybody – No deadly weapon seized – Cannot escape criminality: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1152 (DB)*

– Section 149 – Unlawful Assembly – Common Object & Common Intention – Vicarious Liability – Held – Apex Court concluded that while overact and active participation may indicate common intention, mere presence in unlawful assembly may fasten vicarious criminal liability u/S 149 IPC – Common Object is different from Common Intention as it does not require a prior concert and a common meeting of mind before the attack – It is enough if each appellant has same object and their assembly was to achieve that object – In such case, individual act of each appellant losses its relevance: *Manbodh Singh Vs. State of M.P., I.L.R. (2019) M.P. 637 (DB)*

– Section 149 – Unlawful Assembly – Participation in Crime – Motive & Intention – Held – Merely because other three accused persons (respondents) had not used their weapons does not absolve them of the responsibility and vicarious liability on which the very idea of charge u/S 149 IPC is founded: *State of M.P. Vs. Killu @ Kailash, I.L.R. (2020) M.P. 761 (SC)*

– Section 149 – Unlawful assembly – Principle of vicarious liability – Applicability – Every member of unlawful assembly having common object is responsible for the acts committed by any other member of that assembly and is

guilty of substantive offence: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1152 (DB)*

3. Hostile Witness

– Sections 148, 302/149, 323/149 & 325/149 – Murder – Unlawful Assembly – Common Intention – Hostile Witnesses – Held – Prosecution failed to prove beyond reasonable doubt, involvement of other appellants except Mahipal and Bhaiyalal who assembled alongwith 4-5 persons with common object of forming unlawful assembly for committing murder of deceased – Testimonies of hostile injured eye witnesses can be used to the extent corroborated by other independent witnesses – On basis of statements and evidence of prosecution witnesses, charges against Mahipal and Bhaiyalal u/S 302/149 and 323/149 found proved – Other appellants acquitted of the charges – Appeal no. 1114/04 allowed and appeal no. 1122/04 partly allowed: *Rai Singh Vs. State of M.P., I.L.R. (2017) M.P. *159 (DB)*

– Sections 148, 149 & 302 – Hostile Witness – Evidentiary Value – Held – Some witness may not support prosecution story and in such situation Court has to determine whether other available evidence comprehensively proves the charge – Prosecution version is cogent, supported by 3 eye-witnesses who gave consistent account of incident and their testimonies are corroborated by medical evidence – Hostile witness will not affect the conviction – Appeal dismissed: *Karulal Vs. State of M.P., I.L.R. (2020) M.P. 2524 (SC)*

4. Previous Enmity

– Sections 148, 149 & 302 – Previous Enmity – Held – If witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony – In fact, previous enmity gives a clear motive for crime: *Karulal Vs. State of M.P., I.L.R. (2020) M.P. 2524 (SC)*

– Sections 148, 325/149 & 323/149 – Conviction – Previous enmity between parties – Trial Court acquitted 17 accused persons out of 20 but allegations and evidence were consistent against applicants right from the FIR – It is established that injured persons were mercilessly beaten by applicants whereby they sustained multiple injuries even on vital part of body – No irregularity or illegality committed by Courts below in convicting the applicants – Revision dismissed: *Sardar Singh Vs. State of M.P., I.L.R. (2018) M.P. 2270*

5. Related Witness

– Sections 147, 148, 149, 302/34 & 326 – Appeal Against Acquittal – Related Witnesses – Held – Merely because a witness is related to deceased or the

injured, cannot be said to be untrustworthy and it do not per se render them partisan, especially when version of eye witnesses inspires confidence despite minor contradictions, embellishments and omissions – Testimony of such witnesses cannot be discarded outrightly but has to be scrutinized with care and caution – Further held – Mere non-explanation of injuries of accused is alone not fatal to prosecution – Sufficient evidence to record conviction against respondents for forming unlawful assembly and causing murder with common intention and also causing grievous/simple injuries – Judgment of acquittal set aside: *State of M.P. Vs. Latoori, I.L.R. (2018) M.P. *68 (DB)*

– Sections 148, 149 & 302 – Related Witness – Held – Being related to deceased does not necessarily mean that they will falsely implicate innocent persons – Further, there is an unrelated witness who has supported the version of the eye witnesses – Appellants rightly convicted: *Karulal Vs. State of M.P., I.L.R. (2020) M.P. 2524 (SC)*

6. Separate Conviction/Sentence

– Section 147 & 148 – Separate Conviction and Sentence – Held – Offence u/S 148 IPC is graver offence than the one u/S 147 IPC – When each appellants has been convicted and sentenced u/S 148 IPC, separate conviction and sentence u/S 147 IPC appears unnecessary and unwarranted – Separate conviction and sentence u/S 147 IPC is set aside: *Patru Vs. State of M.P., I.L.R. (2018) M.P. 2239 (DB)*

7. Miscellaneous

– Sections 147, 148, 149, 427, 336, 353, 153, 153-A, 440, 120-B, 188, 333 & 440 – See – Criminal Procedure Code, 1973, Section 438 & 439: *Jaheeruddin Vs. State of M.P., I.L.R. (2018) M.P. 2056*

– Section 148 & 302/149 – Delay in Hearing of Appeals – Speedy Justice – Remedies – Conviction – Life Sentence – Appeal – Prayer for bail rejected by High Court – Appellant in custody for more than 10 years – Apex Court while declining grant of bail, held, for access to speedy justice, concerned authorities may examine whether there is a need of any changes in the judicial structure – There is need to fill vacancies in Courts other than Constitutional Courts and also to consider as to how to supplement inadequacies in present system of appointment of Judges – There is need for consideration whether there should be a body of full time experts without affecting independence of judiciary, to assist in identifying, scrutinizing and evaluating candidates at pre-appointment stage and to evaluate performance post appointment – Uncalled strikes by the Bar Association/Bar Council also discussed and remedies proposed – Union Of India directed to file affidavit in this respect: *Krishnakant Tamrakar Vs. State of M.P., I.L.R. (2018) M.P. 1871 (SC)*

• **– Section 153-A** – Ingredients – Freedom of Expression – Held – Prima facie, applicant delivered speech and expressed his views which is certainly his valuable fundamental right – Right of freedom of expression must include freedom after expression as well, unless it is established with accuracy and precision that it has violated any legal/penal provision – No element in speech of applicant to attract Section 153-A: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 153-A and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory bail – Grounds – Held – Objectionable material/speech is already in possession of police, no possibility of tampering with the recordings – Police issued character certificate to applicant, thus previous criminal history pales into insignificance – Looking to nature and gravity of accusation, role of applicant, false text of second FIR and its prima facie maintainability, necessary ingredients for grant of anticipatory bail fully satisfied – Application allowed: *Arif Masood Vs. State of M.P., I.L.R. (2020) M.P. 2885 (DB)*

– Section 154 – See – Motor Vehicles Act, 1988, Section 166 & 173: *National Insurance Co. Ltd. Vs. Dilip Kumar Jain, I.L.R. (2019) M.P. 2537*

– Sections 166 & 167 – See – Criminal Procedure Code, 1973, Section 197: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Sections 176, 336, 338, 304-A, 286 & 304 – See –Criminal Procedure Code, 1973, Section 227: *P. Sadanand Reddy Vs. State of M.P., I.L.R. (2017) M.P. 426*

– Section 182 – False Information – Ingredients – Held – Gist of offence u/S 182 IPC is giving false information so as to cause the public servant to act upon it – Offence is complete when the information bleaches the public servant – FIR indicates that on basis of false information by applicant regarding offence committed with him u/S 307/34 IPC, report was lodged by Complainant: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Section 182 and Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(a)(i) – Complaint by Court/Private Party – Maintainability – Held – No complaint is necessary for commission of offence which is not related to any Court proceeding – In present case, complaint was not at the instance of private party but was at the instance of investigating agency – Provision of Section 195(1)(a)(i) is not applicable – Proceeding maintainable – Revision dismissed: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Sections 186, 353 & 506 part II – See – Criminal Procedure Code, 1973, Section 195(1)(a)(i) & 216: *Pooran Singh Jatav Vs. State of M.P., I.L.R. (2017) M.P. *56*

– Section 188 – See – Criminal Procedure Code, 1973, Sections 144 & 195 (1)(a)(i): *Preetam Lodhi Vs. State of M.P., I.L.R. (2016) M.P. 2826*

– Sections 191, 193 & 200 – See – Income Tax Act, 1961, Section 132 & 246: *Babita Lila Vs. Union of India, I.L.R. (2017) M.P. 2587 (SC)*

– Section 193 – See – Prevention of Corruption Act, 1988, Sections 13(1)(e), 13(2) & 19: *Shahida Sultan (Ku.) Vs. State of M.P., I.L.R. (2019) M.P. 1138*

– Section 195 and Companies Act (1 of 1956), Section 10-F – Appeal against the order of Company Law Board (CLB) whereby on an application made by respondents, Board directed prosecution of appellants u/S 195 IPC r/w Section 340 Cr.P.C. on the ground that forged documents (gift deeds) were produced as evidence before the Court of Law – Held – Gift deeds were fabricated prior to filing of the same before CLB and there is no allegation that they were fabricated or manipulated after their filing – Supreme Court has held, that where offence was committed earlier and later on, document is produced or is given in evidence in Court, is not contemplated in relevant clause of Section 195 IPC – Prosecution directed by CLB is unsustainable – Impugned order set aside – Appeal allowed: *Rajiv Lochan Soni Vs. Rakesh Soni, I.L.R. (2018) M.P. 1247*

– Section 201 – See – Prevention of Corruption Act, 1988, Section 11: *Gopal Singh Vs. State of M.P., I.L.R. (2016) M.P. *39 (DB)*

– Sections 201, 302 & 376(2)(g) r/w 34 – Gang Rape and Murder – Circumstantial Evidence – Motive – Held – In case of murder based on circumstantial evidence, motive gains significance – It is established that soon after rape of prosecutrix, she and her companion was murdered so that they would not come forward to depose against appellants: *In Reference Vs. Ashok, I.L.R. (2017) M.P. 2783 (DB)*

– Sections 201, 302 & 376(2)(g) r/w 34 – Gang Rape and Murder – Death Sentence – Appreciation of Evidence – Circumstantial Evidence & DNA Report – Prosecutrix was raped and she alongwith her companion were murdered by appellants – Held – As per DNA report, appellant's DNA was matched and was found on underwear and vaginal swab of prosecutrix – Evidence of seizure of mobile phone & silver payal of prosecutrix and shoes of her companion duly established and proved beyond reasonable doubt – Call details also establishes commission of offence by appellants – Evidence shows that chain of circumstantial evidence is complete – Case do not fall in category of "Rarest of Rare" case – Death sentence modified to life imprisonment – Criminal reference rejected – Appeals allowed to such extent: *In Reference Vs. Ashok, I.L.R. (2017) M.P. 2783 (DB)*

– Sections 201, 302 & 376(2)(g) r/w 34 – Gang Rape and Murder – Death Sentence – Rarest of Rare Case – Aggravating and Mitigating Circumstances –

Held – Upon comparison of aggravating and mitigating circumstances, the mitigating circumstances have far away outweighed the aggravating circumstances – Further, it is not possible to identify which accused case falls in category of rarest of rare case – Capital punishment imposed is altered to life imprisonment: *In Reference Vs. Ashok, I.L.R. (2017) M.P. 2783 (DB)*

– Section 211 and Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(b)(i) – Cognizance – Ingredients – Held – For taking cognizance of offence u/S 211 IPC, making of complaint in writing is mandatory when the offence is alleged to have been committed, in or in relation to any proceedings in Court by that or any Court to which that Court is administratively subordinate: *Kapil Vs. State of M.P., I.L.R. (2019) M.P. 2138*

– Sections 212, 217 & 221 – See – Criminal Procedure Code, 1973, Section 468 & 469(1)(b): *Swaraj Puri Vs. Abdul Jabbar, I.L.R. (2018) M.P. 2061*

– Sections 218, 466, 471 & 120 B – See – Prevention of Corruption Act, 1988, Section 13(1) & 13(2): *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *38 (DB)*

– Sections 218, 466, 471, 474 & 120-B – See – Prevention of Corruption Act, 1988, Sections 13(1)(d), 13(2) & 19: *Suraj Kero Vs. State of M.P., I.L.R. (2017) M.P. 1237 (DB)*

– Section 279 & 304-A – Reduction of Sentence & Enhancement of Compensation – Held – Negligence established by prosecution – Applicant already remained in custody for 48 days – Sentence of one year RI reduced to period already undergone and fine amount enhanced from Rs. 500 to Rs. 10,000 to be paid to LR's of deceased – Revision disposed: *Bhagirath Vs. State of M.P., I.L.R. (2020) M.P. 210*

– Sections 279, 337 & 338 – Conviction – Term 'Negligent' – Applicant was the registered owner of the offending vehicle – Trial Court convicted the applicant primarily on the testimony of Kamal, who identified the applicant as the driver of the offending vehicle – Perusal of examination-in-chief of Kamal (PW-2) does not reveal extent of speed at which the offending vehicle was being plied – Merely using the term 'negligent' in the statement cannot be made basis of conviction – None of the examined witnesses has stated the exact or approximate speed of the vehicle, even prosecution has not made any attempt to prove the exact speed of the vehicle from any of the witnesses nor any attempt was made to collect scientific and technical evidence – Merely, on the basis of witnesses stating high speed of vehicle and negligent driving, applicant cannot be convicted – Other two injured witnesses have not even identified the present applicant as the driver of the vehicle, one of them was the complainant who got the FIR registered – Judgment passed by the Sessions Court as

well as by the Trial Court are set aside – Appellant acquitted: *Narayan Singh Vs. State of M.P., I.L.R. (2017) M.P. *55*

– Sections 279, 337, 338 & 304-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashing of criminal proceeding – A Roller Machine being used for construction of road, being driven negligently by its driver non-applicant No. 2, caused injuries to three persons and out of them one succumbed to the said injuries – Applicant was not named in the FIR – There are no specific allegation at all against him, he has been made accused only on account of being the president of company – Held – Liability for offence involving element of negligence or rashness is always direct and restricted in its application only to the person to whom the impugned act is directly attributed – No one can be made liable for an offence if that person did not cause the effect of such rash or negligent act by his own action : *Arun Kapur Vs. State of M.P., I.L.R. (2017) M.P. 1008*

– Section 294 and Information Technology Act (21 of 2000) – Section 80(1) – Public Place – Ingredients – Held – Hotel, shop, public conveyance are also public place – The words "any other place intended for use by or accessible to the public" would not only include free to air transmission but also transmissions based on subscription – Prima facie, offence u/S 294 is attracted: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Sections 294 & 307 and Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 401 – Framing of charge – Attempt to murder – Dispute arose on parking of the car – Driver was asked to remove the car – On intervention of the complainant, applicant started abusing him and he brought a knife from his medical shop and gave knife blow on abdomen of the complainant – Held – Evidence collected by the prosecution prima facie establishes that the injury is caused by knife on vital part of the complainant – The strong suspicion arises against the applicant for commission of offence u/S 307 of IPC – Trial Judge has rightly framed charge u/S 294 & 307 of the IPC and 25(1-B)(b) of the Arms Act – Revision is dismissed: *Shrish Kumar Mishra Vs. State of M.P., I.L.R. (2016) M.P. 2577*

– Sections 294, 323/34 & 506 II – See – Criminal Procedure Code, 1973, Section 228: *Bablu @ Rameshwar Prasad Vs. State of M.P., I.L.R. (2018) M.P. *101*

– Sections 294, 323 & 506/34 – See – Criminal Procedure Code, 1973, Section 438: *Ajeet Jain Vs. State of M.P., I.L.R. (2018) M.P. 1213*

– Sections 294, 323, 506 & 34 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x): *Mohsin Vs. State of M.P., I.L.R. (2017) M.P. *118*

– Sections 294, 341, 307 & 323 – See – Criminal Procedure Code, 1973, Sections 227 & 228: *Babu Vs. State of M.P., I.L.R. (2016) M.P. 1512*

– Sections 294, 506 & 323/34 – See – Criminal Procedure Code, 1973, Section 321: *Ram Milan Dubey Vs. Ku. Vandana Jain, I.L.R. (2017) M.P. 952*

– Section 298 – Applicability – Held – In the episode of web series, when the love interest of male physician invites him to attend "Satyanarayan Katha", on hearing this, physician makes facial expression showing disgust – Such utterance or expressions of disgust has been shown in background of intentions of physician who was more inclined towards physical intimacy rather than attending religious function – Prima facie, no deliberate intention appears to wound religious feelings of complainant – Offence u/S 298 IPC not attracted: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

– Section 299 & 300 – Culpable Homicide & Murder – Ingredients and Exceptions – Discussed and explained: *Tularam Vs. State of M.P., I.L.R. (2018) M.P. 2789 (SC)*

– Section 300, First Exception – Applicability – Held – The fact that incident occurred inside house of deceased does away with the defence of grave and sudden provocation given to accused by deceased ladies, thus assailants could not claim benefit of first exception of Section 300 IPC: *Shaitanbai Vs. State of M.P., I.L.R. (2020) M.P. 1720 (DB)*

– Section 300, Thirdly & Fourthly – Applicability – Held – Doctor stated that injuries were such as would cause death in ordinary course of nature – Such statement attracts clause thirdly of Section 300 – "In the ordinary course of nature" would mean that injury is of such nature that death would result without medical intervention – If death results even after medical intervention, then fourthly clause of Section 300 would be applicable: *Shaitanbai Vs. State of M.P., I.L.R. (2020) M.P. 1720 (DB)*

– Section 300, Fourth Exception – Applicability – Held – It is established that accused herself same to house of deceased with a daranta which rules out absence of premeditation – Prior to attacking the deceased, a quarrel was going on for a long while, thus no sudden fight and no sudden quarrel – Deceased was defence-less whereas accused was armed with daranta and there was no attempt on part of deceased to cause any injury to accused, thus accused has taken undue advantage of situation – Defence under Fourth Exception is not available to accused: *Shaitanbai Vs. State of M.P., I.L.R. (2020) M.P. 1720 (DB)*

– Section 300 – Murder – Even if it is presumed that the appellant was not intended to cause the death of the deceased, but act of the accused in inserting his

penis in the vagina of a girl of about 8 years having short aperture with force and continued to give jerks so that her uterus was torn and ruptured is an imminently dangerous act and he should know that in all probability of such act, the death of the prosecutrix would be caused and therefore his act falls within the fourth ingredient of Section 300 of IPC: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Section 300 & 302 – Appreciation of Evidence – Circumstantial Evidence & Medical Evidence – Hostile Witnesses – Appellant killed his one year old daughter by strangulating her – Held – FIR lodged promptly by father of appellant naming only appellant as accused – At initial stage itself, all eye witnesses named only appellant as accused in statements u/S 161 Cr.P.C. and later turned hostile – All hostile witnesses are relatives and interested witnesses and it seems they are trying to protect and shield appellant having entered into a compromise – Even complainant admitted in cross examination that matter has been compromised – Prosecution story duly corroborated by medical evidence – Case does not fall in any exceptions of Section 300 IPC – Conviction affirmed – Appeal dismissed: *Brijlal Vs. State of M.P., I.L.R. (2019) M.P. 177 (DB)*

– Section 300 (Exception 1), 302/34, 304 Part I – Conviction – Life Imprisonment – Appreciation of Evidence – Motive – Appellant grazing his ox in the field of deceased and on this issue, sudden quarrel started between appellant and deceased – Appellants inflicted injuries to deceased with lathi and axe, as a result of which deceased died – Held – There was a sudden provocation and in that event appellant inflicted injuries by lathi, hence there was no motive to kill the deceased – Exception 1 to Section 300 IPC postulates that if there is grave and sudden provocation, offence would not be a murder – Offence committed by appellant no.1 would fall u/S 304-Part I of IPC – Further held – Deposition of eye witness that appellant no.2 (wife of appellant no.1) inflicted injuries by axe is not reliable because the evidence of doctor who performed postmortem shows that there was no incised wounds on the body of deceased – Name of appellant no.2 is also not mentioned in FIR – She cannot be convicted for the said offence – Conviction of Appellant no.1 is altered to one u/S 304- Part I IPC and conviction of Appellant no. 2 is set aside – Appeal of appellant no.2 is allowed: *Bhure Singh Vs. State of M.P., I.L.R. (2018) M.P. 929 (DB)*

– Section 300, Exception 1, Explanation, 302 & 304 – Murder – Culpable homicide not amounting to murder – Appellant, a constable in CRPF – He purchased bricks worth Rs. 10,000/- from one Dumarilal (now dead) on credit – On fateful day, deceased demanded his payment of bricks from the appellant – Losing his temper, appellant slapped the deceased – In turn – Deceased slapped the appellant – Appellant fired three Gun shots at point blank range – Death – Trial Court – Conviction &

sentence of life imprisonment – Appeal – Grounds – Property dispute – Gun shots not from service revolver but from "Desi Katta' of one Chamru – Held – Guilt of the appellant is duly proved by the evidence of the eye witnesses Chamru (P.W. 9) and Bhagwan Das (P.W. 10) which is duly corroborated by forensic report, Ex. P- 17 which narrates that the gun shots were from service revolver of 0.38 bore and not from "Desi Katta" – Slapping to appellant by deceased not amounts to sudden provocation so as to fire gun shots – Case not covered under Section 304 Part I of IPC – Appeal dismissed: *Shivram Sahu Vs. State of M.P., I.L.R. (2017) M.P. 376 (DB)*

– Section 300, Exception 4, 302/34 & 294 and Evidence Act (1 of 1872), Section 32 – Conviction – Dying Declaration – Held – Testimony of eye witnesses duly corroborated by the dying declaration and medical evidences – Prosecution established beyond reasonable doubt that appellant caused fatal injuries to deceased resulting in his death – Further held – Incident occurred at spur of moment in the midst of hot talks – No previous enmity between accused and deceased nor the assailants have pre-planned the murder – Deceased succumbed to injuries after 11 days from date of incident – Accused entitled for benefit of Exception 4 to Section 300 IPC – Case would fall u/S 304 Part II IPC – Conviction modified accordingly – Appeal partly allowed: *Ram Sevak Vs. State of M.P., I.L.R. (2017) M.P. 1960 (DB)*

– Section 300, Exception 4, 302/34, 326 & 304 Part I and II – Murder – Conviction – Intention – Solitary Blow – Appellant Shrichand convicted u/S 302/34 IPC – Held – Regarding payment of price of sheaves grass supplied/sold by appellants to deceased, appellants had an altercation with deceased where Shrichand struck a solitary axe blow on back of deceased – Held – There was a sudden quarrel/fight and appellant in heat of passion inflicted solitary blow without premeditation on back of deceased which is not a vital part of human body – No intention to cause death – Act would fall under exception 4 to Section 300 IPC – Injury caused by dangerous weapon like axe which could likely to cause death, therefore act would not come u/S 304 (Part I) but u/S 304 (Part II) IPC – Conviction of Shrichand modified to one u/S 304 (Part II) IPC – Sentence of life imprisonment reduced to 10 years R.I. – Appeal partly allowed: *Shrichand Vs. State of M.P., I.L.R. (2017) M.P. 2231 (DB)*

– Section 300, Exception 4, 302 & 304 Part II – Premeditation – Held – Occurrence took place suddenly due to trivial issue of grazing of buffaloes, there was no premeditation, prior deliberation or determination to fight – Occurrence would fall under Exception 4 to Section 300 – Conviction u/S 302 IPC modified to one u/S 304 Part II – Appeal partly allowed: *Khuman Singh Vs. State of M.P., I.L.R. (2019) M.P. 2435 (SC)*

– Section 300, Exception 4, 304 & 304-A – Ingredients – Applicability – Car was driven rashly and negligently dashing a 3 yrs. old child resulting into his death – Held – Appellant did not have intention to cause death – Toddler was allowed to play in street by parents, it can be presumed that it was not a busy street – It cannot be inferred that appellant cruised in a busy street at a dangerously high speed having "knowledge" that in probability the vehicle would dash against someone and kill him – Charge modified from Section 304 to one u/S 304-A IPC – Revision allowed: *Ravi Singh Vs. State of M.P., I.L.R. (2019) M.P. 2378*

– Section 300, Exception 4, 304 & 304-A – Ingredients – Applicability – Held – Section 304-A applies to rash and negligent acts which directly cause death of some person – Negligence and rashness are essential elements and where there is neither "intention" to cause death nor "knowledge" that, the act done in all probability would cause death – For attracting Section 304-A, first requirement is to rule out "culpable homicide" – All cases of intentional and knowingly inflicted acts of crime, directly or willfully are excluded: *Ravi Singh Vs. State of M.P., I.L.R. (2019) M.P. 2378*

– Sections 300 & 304 part I – Murder or culpable homicide not amounting to murder – No significant injury inflicted on vital part of the body – Weapons used were sticks – Accused persons had no intention to cause death – Held – "Bodily injury" includes plural injuries – Injuries cumulatively sufficient to cause death in ordinary course of nature, even none of those injuries individually sufficient – If death is caused and injury causing is intentional, the case would fall under clause thirdly of Section 300: *State of M.P. Vs. Goloo Raikwar, I.L.R. (2016) M.P. 2881 (SC)*

– Section 301 & 302/34 – Murder – Life Conviction – Doctrine of Transfer of Malice – Held – Accused persons armed with Katar, iron rod and lathi, with common intention to kill, assaulted one Shameem but while causing injuries to him they killed one Rakesh who came to rescue Shameem – Further held – After running away from the spot the conduct of the appellants to come back again and to inflict multiple injuries by mean of deadly weapons demonstrate common intention of the appellants to commit murder – Supreme Court held that if accused persons were aiming at one person but killed other person, they would be punishable for committing offence of murder under the doctrine of transfer of malice a contemplated u/S 301 IPC – Trial Court rightly convicted the appellants – Appeal dismissed: *Mohd. Faizan Vs. State of M.P., I.L.R. (2018) M.P. 734 (DB)*

SYNOPSIS : Section 302

1. Amicus Curiae

2. Appreciation of Evidence

3. Ballistic Expert Report

4. Benefit of Doubt

1. Amicus Curiae

– Sections 302, 363, 366, 376(2)(f) & 377 and Protection of Children from Sexual Offences Act (32 of 2012), Sections 4, 5 & 6 – Appointment of Amicus Curiae – Held – In cases, if there is possibility of life/death sentence, only advocates having minimum 10 yrs. practice be considered for amicus curiae or through legal services to represent the accused – In matters regarding confirmation of death sentence before High Court, only Senior Advocates must be first considered for amicus curiae – For preparation of case, reasonable and adequate time, a minimum of seven days be provided to amicus curiae – He may be granted to have meetings and discussions with accused: *Anokhilal Vs. State of M.P., I.L.R. (2020) M.P. 1011 (SC)*

– Sections 302, 363, 366, 376(2)(f) & 377, Protection of Children from Sexual Offences Act (32 of 2012), Sections 4, 5 & 6 and Constitution – Article 21 & 39-A – Trial – Procedure – Amicus Curiae – Held – The day amicus curiae was appointed, charges were framed, and entire trial concluded within a fortnight thereafter – 13 witnesses examined within 7 days – Fast tracking of process must not result in

burying cause of justice – While granting free legal aid to accused, real and meaningful assistance should be granted – Sufficient opportunity not granted to amicus curiae to study the matter and infraction in that behalf resulted in miscarriage of justice – Impugned judgments set aside – De-novo consideration of matter directed – Appeal disposed: *Anokhilal Vs. State of M.P., I.L.R. (2020) M.P. 1011 (SC)*

2. Appreciation of Evidence

– Section 302 – Appreciation of Evidence – Held – FIR lodged promptly with all essential facts against appellant – Evidence of doctor corroborated the testimony of complainant regarding injuries – FSL report established that blood found on seized weapon and clothes of accused was of the deceased – Contradictions in testimony of prosecution witnesses are trivial in nature and neither material nor sufficient to wholly discard the same – Appellant rightly convicted – Appeal dismissed: *Pooran @ Punni @ Bhure Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 1547 (DB)*

– Section 302 – Conviction – Life Imprisonment – Appreciation of Evidence – Appellant was tenant of deceased – Regarding demand of payment of rent, dispute occurred and appellant assaulted the deceased with a wood which resulted in his death – Held – No defence witness was examined – Prosecution witness Banti clearly deposed that he had witnessed the beating given by appellant to deceased and his statement was materially corroborated by two other prosecution witnesses which inspires confidence in prosecution story – Appellant rightly convicted – Appeal dismissed: *Madhav Prasad Vs. State of M.P., I.L.R. (2017) M.P. 1934 (DB)*

– Section 302 – Dead body not recovered – Held – Prosecution proves beyond reasonable doubt that victim has been done to death – Accused can be held guilty of committing murder of deceased: *Bhagwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 564 (DB)*

– Section 302 – Murder – Appellant – Conviction – Other accused persons acquitted – FIR – Allegations – Appellant alongwith other accused persons assaulted one Haseeb – Counter FIR by appellant – Section 307 – Appeal – Grounds – Evidence not appreciated in proper perspective – Suppression of material facts by prosecution – Non-seizure of weapons from the appellant – Held – As there is material omission and contradiction in the statements of prosecution witnesses, prosecution has not brought on record the 'Dehati Nalishi' lodged by the present appellant nor medical record of injuries suffered by the appellant, non-seizure of weapons from the appellant etc., so the appellant is liable to be acquitted – Conviction & sentence imposed by the Trial Court set aside – Appeal allowed: *Rehman Vs. State of M.P., I.L.R. (2016) M.P. 3106 (DB)*

– Section 302 – Murder – Conviction – Appreciation of Ocular and Medical evidence – Deceased died by gun shot injury caused by country made weapon – Held – No such material discrepancy so as to discard ocular evidence vis-à-vis FSL report and report of the PM Doctor – Eye-witnesses largely supported the medical evidence – Appellant failed to discharge the burden that injury could not have been caused by country made .12 bore gun as was wielded by him – Appellant not entitled for benefit of doubt – Appeal dismissed: *Lallu @ Dashrath Baghel Vs. State of M.P., I.L.R. (2018) M.P. *83 (DB)*

– Section 302 – Murder – Conviction – Life Imprisonment – Appreciation of Evidence – Appellant administered poison (Sulphas) to child of complainant – Complainant saw appellant giving water from nand (pot) whereafter child cried loud and died – Held – Despite evidence that appellant took water from nand (pot), the same was neither recovered/seized nor water of the pot was taken for examination – No evidence led by prosecution directly or indirectly that appellant had poison in her possession or from where she procured and in which place same was stored – Prosecution failed to prove necessary ingredients – Appellant discharged – Appeal allowed: *Shanti Bai (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *147 (DB)*

– Section 302 – Murder – Conviction – Testimony of witnesses – Ocular & Medical Evidence – Discrepancy – Effect – Held – The only eye witness of the case stated that only one blow was given on the head of deceased whereas the doctor who examined the deceased stated that he found four injuries on his head and further the doctor who performed autopsy stated that he found nine injuries, all on head and face of deceased – A slight discrepancy in medical and oral evidence is not material as the time of incident was 3–3:30 am and there was not much light and all the persons were under the influence of liquor: *Hari Vs. State of M.P., I.L.R. (2017) M.P. *138 (DB)*

– Section 302 – Murder – Facts – Appellant attacked his cousin with a knife in the market – Injured was immediately taken to hospital – Declared dead – P.M. Report reveals homicidal death – During T.I. Parade, appellant identified by PW-1 – Seizure and recovery of knife – Motive – Long pending property dispute – F.I.R. lodged within 15 to 20 minutes of the incident – Trial Court – Conviction – Sentence – Appeal against – Held – There are overwhelming evidence against the appellant consisting of eye witnesses consistently speaking about the attack made by the appellant, oral dying declaration, seizure & recovery of knife proved by Panch Witness, motive for the crime proved, FIR was also lodged without delay – Conviction & sentence awarded by the trial Court upheld – Appeal dismissed: *Imran Hussain Vs. State of M.P., I.L.R. (2016) M.P. *41 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 106 – Appreciation of Evidence – Presumption – Held – Prosecution established that incident took place in

house of appellant and he was present in his house at the time of incident – Recovery of weapon also established – Strong presumption arises against the appellant: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

– Section 302/34 – Appreciation of Evidence – Eye Witnesses – Ocular & Medical Evidence – Held – Previous enmity existed between parties regarding property – Eyewitnesses deposed that they saw the accused giving beatings to deceased with lathi while medical evidence suggests that cause of death was due to fatal injury by a sharp edged weapon – Contradictions in deposition of eye witnesses – Further, police Officer who conducted seizure proceedings and prepared seizure memo was not examined – Evidence creates serious doubt on prosecution case – Conviction and sentence set aside – Appeal allowed: *Baliraj Singh Vs. State of M.P., I.L.R. (2017) M.P. 2614 (SC)*

– Sections 302/34, 304-B/34, 498-A & 201 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Appreciation of Evidence – Incriminating Circumstances – Explanation – Held – Wife died in matrimonial home in abnormal circumstances where several injuries were found on her body – Incriminating circumstances brought to notice of appellants during examination u/S 313 Cr.P.C. but no explanation by them regarding multiple injuries and cause of death – Letters written by deceased to her parents within a week before her death, duly proved, which had a clear mention of cruelty for dowry demands – Cruelty soon before death established – Necessary ingredients of the offences available against appellants – Appellants rightly convicted – Appeal dismissed: *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

– Section 302/34 & 324 – Conviction – Testimony of Eye Witnesses – Misnaming the weapon of offence – Held – Misnaming the weapon by eye witness in moment of fear and anguish is insignificant and cannot be made basis for doubting the prosecution case nor will make the whole testimony of witness unacceptable especially when she is consistent in other material particulars such as identity of accused persons or the time and place of incident – It cannot be expected from a wife, whose husband is beaten to death and son is subjected to grievous injuries, to watch with precision as to which of the accused was causing which injury and by what weapon – FIR was lodged within an hour, disclosing the name of accused persons – Weapon of offence was recovered on the direction of accused persons – Commission of offence by accused persons is clearly established by prosecution beyond reasonable doubt – Conviction affirmed and upheld – Appeal dismissed: *Karun @ Rahman Vs. State of M.P., I.L.R. (2018) M.P. 542 (DB)*

– Sections 302, 120-B & 201 – Murder – Memorandum and Seizure Documents – Authenticity – Held – Major discrepancies, vital contradictions and

embellishment in evidence of prosecution witnesses makes prosecution story doubtful and gives strength to claim of appellants that memorandum and seizure documents were made up and fabricated: *Kishan Singh @ Krishnapal Singh Vs. State of M.P., I.L.R. (2017) M.P. 2739 (DB)*

– Sections 302, 148 & 149 – Appreciation of Evidence – Eye Witness – Ocular & Medical Evidence – Held – Eye witnesses clearly identified and deposed in detail against appellants – No previous enmity between appellants and eye witnesses – In defence, appellants failed to explain as to how human blood was found in their clothes and on weapons recovered from them – Ocular evidence is fully corroborated with medical evidence – Appellants rightly convicted: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Section 302/149 & 148 – Appreciation of Evidence – Contradictions and Discrepancies in Evidence – Conviction and Sentence – Life Imprisonment – Held – Discrepancies and contradictions in evidence of prime prosecution witnesses – No corroboration among their statements – Genesis of FIR is doubtful – No identification parade conducted – No independent witness in the case – Prosecution miserably failed to prove guilt of appellants beyond reasonable doubt – Both the Courts below based the conviction on their own assumptions and presumptions – Impugned judgment set aside – Appeal allowed: *Shanker Vs. State of M.P., I.L.R. (2018) M.P. 2301 (SC)*

– Sections 302/149, 304 (Part II) & Exceptions to Section 300 – Ingredients – Held – No quarrel taken place between appellants and victims – Merely because electricity was disrupted in village for which victims were not responsible, appellants assaulted and killed one of them – Appellants acted in cruel and unusual manner – Attack on vital parts of body by use of tangi is sufficient to infer that he had knowledge that any such injury would cause death – Exceptions to Section 300 IPC not attracted, thus appellant cannot be convicted u/S 304 Part II IPC: *Manbodh Singh Vs. State of M.P., I.L.R. (2019) M.P. 637 (DB)*

– Section 302 & 302/34 – Murder – Conviction – Life Sentence – Eye Witnesses – Minor Contradictions – In a bicycle, appellant Bhagwan was riding and appellant Ramsiya was sitting on the carrier – Ramsiya executed the fatal gun shot to deceased – In respect of appellant Ramsiya, testimony of eye witnesses corroborates the prosecution story – Ocular evidence is duly supported by medical evidence – There are few minor/inconsequential omissions, contradictions and embellishments which deserves to be ignored – Conviction of Ramsiya upheld: *Ramsiya Vs. State of M.P., I.L.R. (2018) M.P. 1976 (DB)*

– Sections 302, 325/149, 148 & 323 and Evidence Act (1 of 1872), Sections 3, 60, 145 & 157 – Accused persons allegedly assaulted deceased and other eye

witnesses in a very cruel manner with farsa, tangi, bhala and lathi – Deceased and his sons sustained grievous injuries – Complainant party were neither aggressors nor armed with deadly weapons – No injury was sustained by the accused persons – Held – There is no reason to disbelieve the prosecution version which was duly corroborated by the evidence of eye-witnesses, independent witness as well as by the medical evidence – On account of minor contradiction whole statement can not be discarded – Prosecution has discharged its onus – No interference is called for – Appeal dismissed: *Sitaram Vs. State of M.P., I.L.R. (2017) M.P. 116 (DB)*

– Sections 302, 364-A, 201 & 120-B and Evidence Act (1 of 1872), Section 106 – Burden of Proof – Held – When it is duly established that deceased was kidnapped by appellants, section 106 of the Act of 1872 places onus on them to produce material to show the release of deceased from their custody – In absence thereof, it has to be accepted that custody remained with them till deceased was murdered: *In Reference Vs. Rajesh @ Rakesh, I.L.R. (2017) M.P. 2826 (DB)*

– Section 302, 376(A), (D) – Rape – Evidence – Minor Contradictions – Held – Courts while trying an accused on charge of rape must deal with utmost sensitivity, examine the broader probability of case and not get swayed by minor contradictions or insignificant discrepancies in the evidence which are not of a substantial character: *Vinay Vs. State of M.P., I.L.R. (2017) M.P. 2752 (DB)*

– Sections 302, 376(2)(f) & 201 – Rape and murder – No document brought on record that accused on earlier occassion had made attempt to commit rape – Doctor who had examined accused failed to identify him in Court – Further, abrasions could be caused during the day while working in and around – Recovery of undergarments of deceased also doubtful – No blood was found on the underwear of deceased – Allegation of presence of accused on the spot was missing in statement made to police u/s 161 Cr.P.C. – High Court rightly acquitted the respondent: *Ram Sunder Sen Vs. Narender @ Bode Singh Patel, I.L.R. (2016) M.P. 341 (SC)*

– Sections 302, 394, 460 & 34 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Theft & Murder – Appreciation of Evidence – Held – Theft and murder forms part of one transaction – Circumstances may indicate that theft and murder committed at same time but it is not safe to draw inference that the person in possession of stolen property is the murderer: *Sonu @ Sunil Vs. State of M.P., I.L.R. (2020) M.P. 1816 (SC)*

– Section 302 & 498-A and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Contradictions – Testimony of Close Relatives – Appreciation of Evidence – Offence registered against husband u/S 302 and 498-A IPC on allegation that he poured Kerosene on his wife and set her ablaze which resulted into her death

– Trial Court acquitted the accused – State Appeal – Held – There are three dying declarations in the present case which are substantially contradictory when co-related with testimony of other prosecution witnesses – Further held – If there is a possibility that deceased was tutored before death by her close relative, her dying declaration cannot be the sole basis of conviction – Testimony of close relatives also does not find any corroboration – It was further surprising that father of deceased in his cross-examination admitted that after the incident, he demanded Rs. 50,000/- from accused – Statement of close relative of deceased are not true and cannot be relied upon – Evidence of Doctor/PW 4 also indicates that incident may be accidental or suicidal – Trial Court rightly appreciated the prosecution evidences in right perspective – Appeal dismissed: *State of M.P. Vs. Ramesh Kumar, I.L.R. (2018) M.P. 1188 (DB)*

3. Ballistic Expert Report

– Section 302 – Weapon of Offence – Expert Report – Held – As per ballistic expert, seized gun was full of rust which shows that it has not been used for last 2 years – Further, gunshot injury is caused from a distance of about 84 feet and cannot be caused from a distance of 10 feet, as stated by prosecution witnesses – Prosecution failed to discharge its duty to prove by expert evidence that injuries were possible from weapon allegedly used by appellant – If ocular evidence is diametrically opposite to expert evidence, conviction wholly based on oral testimony cannot be upheld – Conviction set aside – Appeal allowed: *Ajay Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2098 (DB)*

4. Benefit of Doubt

– Section 302 – Appreciation of Evidence – Presence of Accused – Held – Name of appellants missing both in "Dehati Nalishi" as well as in statement of u/S 161 Cr.P.C. and there is no plausible explanation by prosecution in this regard – When witness could name other assailants, we see no reason as to why he could not name the appellants if he had actually identified them at place of occurrence – Grave doubt with regard to presence of appellants at place of incidence – Benefit of doubt obviously has to go to appellants – Impugned order set aside – Appellants acquitted – Appeals allowed: *Peer Singh Vs. State of M.P., I.L.R. (2019) M.P. 1812 (SC)*

– Sections 302, 148 & 149 – Appreciation of Evidence – Eye Witnesses – Benefit of Doubt – Acquittal by Trial Court – Convicted by High Court – Life Imprisonment – Held – Distance from where PW-4 is said to have witnessed the incident was about 650 feet – Further, two ladies from house of deceased who were cited as witnesses and were associated with test identification parade were not examined by prosecution and in this regard no explanation given by prosecution – Blood stained clothes of son of deceased who carried him to police station were not

seized and produced – Appellants entitled to benefit of doubt and are hence acquitted – Appeal allowed: *Halke Ram Vs. State of M.P., I.L.R. (2018) M.P. 2664 (SC)*

– Section 302/149 – Appreciation of Evidence – Contradictions & Omissions – Held – There are material contradictions, omissions and improvements in statement of sole eye witness recorded u/S 161 as well as in deposition before Court qua the appellants – Not safe to convict them on basis of such evidence – There was a prior enmity – No other independent witness supported the prosecution case – Appellants entitled for benefit of doubt – Conviction set aside – Appeal allowed: *Parvat Singh Vs. State of M.P., I.L.R. (2020) M.P. 1515 (SC)*

– Section 302/149 & 148 – Appreciation of Evidence – Statement of Witnesses – Contradictions & Omissions – Held – Various material contradictions in statements of witnesses – Doubt has been cast that they are prepared witnesses, coming with a parrot like version, however when it comes to attending circumstances, their evidence falls apart and does not withstand the scrutiny of cross-examination – All witnesses have some criminal antecedents – There may be previous enmity – Witnesses cannot be relied – Benefit of doubt has to be given to accused – Conviction set aside – Appeal allowed: *Imrat Singh Vs. State of M.P., I.L.R. (2020) M.P. 548 (SC)*

– Sections 302, 394, 460 & 34 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Chain of Circumstances – Common Intention – Held – Conviction of appellant based on recovery of mobile phone of deceased, where there is discrepancy about the sim number also – Recovery from appellant suffers from suspicion and doubt – Death caused by injuries inflicted with knife which was recovered from co-accused – PW-5 to whom Court below relied to hold completion of chain of circumstances, has not taken name of appellant – Not safe to convict appellant only on basis of such recovery, he is entitled for benefit of doubt – Conviction of appellant set aside – Appeal allowed: *Sonu @ Sunil Vs. State of M.P., I.L.R. (2020) M.P. 1816 (SC)*

5. Child Witness

– Section 302 – Conviction – Life Imprisonment – Child Eye Witness (daughter) – Credibility – Murder of wife – Daughter was the eye witness who disclosed that father killed her mother – Held – It is a settled law that a reasonable degree of caution and circumspection is required while dealing with the evidence of a child witness, however if the same on a close and careful scrutiny is found reliable, the Court can act upon such an evidence - Testimony of daughter of accused aged 12 years is clear, cogent, consistent and free from any material infirmity or anomaly – Nothing in the cross examination of the child witness to indicate that she has any ill

will, reason or motive to falsely implicate her own father – Further held – Why a person whose wife has suffered death, will keep hiding or absconding for more than 30-35 hrs of the incident and what has prevented him from bringing the incident to the notice of neighbours, relatives or the police – Conviction based on proper appreciation of evidence and does not call for interference – Appeal dismissed: *Suraj @ Suresh Vs. State of M.P., I.L.R. (2017) M.P. 1475 (DB)*

– Section 302 – Murder – Conviction – Life Imprisonment – Testimony of Child Witness – Credibility – Appreciation of Evidence – Accused assaulted the deceased by axe – Child witness aged about 11 years – Held – It is settled law that evidence of child witness is not required to be rejected per se, but Court, as a rule of prudence considers such evidence with close scrutiny and only on being convinced about quality of such evidence and its reliability, bases the conviction by accepting the deposition of child witness – In the present case, child witness has not made any contradictory statement and there is no material discrepancy found in her deposition – Statement of other witnesses not challenged in cross examination and are trustworthy – Statement of child witness corroborated by other witnesses – Extra judicial confession by accused and last seen circumstances is also proved – Trial Court rightly convicted the accused – Appeal dismissed: *Ratia Bai Vs. State of M.P., I.L.R. (2017) M.P. *111 (DB)*

– Sections 302, 148 & 149 – Appreciation of Evidence – Child Witness – Held – Statement of child witness to be considered with utmost care and caution/ circumspection – Statement of child witness not been corroborrated by any other witnesses – Trial Court recorded that child witness appears to be tutored – Not safe to rely his version: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– Section 302/149 & 148 – Murder – Conviction – Child Witness – Credibility — Appreciation of Evidence – Held – Solitary statement of child witness does not inspire confidence because of material contradictions, exaggeration, inconsistencies, omissions and improvements in the Court statements in comparison to dehati nalishi and police statement – Such evidence is wholly unsafe unless corroborated by independent witnesses – Absence of corroboration even of departmental prosecution witness – Evidence not reliable and trustworthy – Appellants acquitted of charge – Appeal allowed: *Sakharam @ Bagad Vs. State of M.P., I.L.R. (2017) M.P. 2445 (DB)*

– Section 302 & 304 Part II – Child Witness – Credibility – Held – Apex Court concluded that law recognized the child as competent witness – Son of appellant (child witness) narrated the incident with accuracy and precision showing that appellant/ father killed his mother – Defence could not demolish his statement during cross examination – Nature of injuries and cause of death shows that statement of child

witness is trustworthy and is further corroborated by medical evidence, thus his statement cannot be discarded: *Sunder Lal Mehra Vs. State of M.P., I.L.R. (2019) M.P. 903 (DB)*

6. Circumstantial Evidence

– Section 302 – Circumstantial Evidence – Appellant killed his wife and two daughter with axe – No eye witness – Held – Dead bodies found inside the house where appellant was living with deceased persons – Extra judicial confession of appellant, recovery of axe at his instance, presence of human blood on articles with other corroborative evidences makes it clear that appellant committed the offence – Appellant failed to establish the plea of alibi – Conviction upheld: *Kanhaiyalal Vs. State of M.P., I.L.R. (2019) M.P. 2575 (DB)*

– Section 302 – Circumstantial Evidence – Burden of Proof – Held – Deceased children were present in the house of accused, where he used to live alone – His wife was living separately in another village – Dead bodies were found in the house of accused for which he failed to give any explanation – As per postmortem report, death was homicidal – Accused was absconding and was arrested after a long time – Wife also deposed that accused used to frequently quarrel with her regarding her character saying that he is not the father of these children – Conduct of accused also shows that he murdered his both sons in his own house and thereafter he absconded – Accused rightly convicted – Appeal dismissed: *Chhuttan Kori Vs. State of M.P., I.L.R. (2019) M.P. 918 (DB)*

– Section 302 – Circumstantial Evidence – Last Seen Together – Held – Looking to the time gap, evidence of wife of deceased is not sufficient to establish proximity of accused in commission of crime though he was last seen in company of deceased, a day back – Possibility of not having access of any other persons during the time gap not proved by prosecution – Last seen evidence not proved, thus recovery of weapon is not relevant – No blood stained clothes or any incriminating articles found to connect appellant with crime – Chain of circumstantial evidence is not fully established/proved beyond reasonable doubt to bring home the charge u/S 302 IPC – Conviction set aside – Appeal allowed: *Ratiram Gond Vs. State of M.P., I.L.R. (2019) M.P. 644 (DB)*

– Section 302 – Death Sentence – Appreciation of Evidence – Circumstantial Evidence – Held – No direct evidence, conviction based on circumstantial evidence wherein only a knife has been recovered without any blood stain – No attempt to recover fingerprints from the broken lock of house – Major contradictions and omissions in the prosecution evidence resulting in non-completion of chain of circumstances – Prosecution cannot be permitted to take advantage of weakness of

defence when it failed to prove satisfactory motive of crime – Prosecution failed to establish the charge beyond reasonable doubt – Conviction set aside – Appeal allowed: *In Reference Vs. Ankur @ Nitesh Dixit, I.L.R. (2019) M.P. *68 (DB)*

– Section 302 – Homicidal Death & Suicide – Circumstantial Evidence & Medical Evidence – Held – Deceased was strangulated to death as it would not be possible for appellant alone to hang the deceased, body was also found lying on ground – Injuries also indicates struggle or resistance in last hour – Neck of deceased not found stretched/ elongated nor tongue was protruding – Theory of suicide is ruled out – Appellant did not inform anyone living nearby much less the parents of deceased – Prosecution established homicidal death inside the house where deceased resided with appellant alone – Appellant rightly convicted – Appeal dismissed: *Kalu alias Laxminarayan Vs. State of M.P., I.L.R. (2020) M.P. 555 (SC)*

– Section 302 – Murder – Conviction – Circumstantial Evidence – Plea of Alibi – Burden of Proof – Appellant convicted for murder of his wife – Held – Wife was killed by throttling during night hours in bed room of their house when she was sleeping alongwith her husband (appellant) and minor children – Appellant found missing in morning – Crime committed within four corners of house – Burden of explaining the circumstances wherein deceased was throttled to death was on appellant but he utterly failed to discharge the same – No evidence in defence to establish plea of alibi – Deposition of appellant's son that appellant was at home at the night of incident, was not challenged in cross-examination – Trial Court rightly convicted the appellant – Appeal dismissed: *Mahesh Soni Vs. State of M.P., I.L.R. (2017) M.P. 2463 (DB)*

– Section 302 – Murder – Life Conviction – Circumstantial Evidence – Burden of Proof – Held – Appellant and deceased (husband and wife) living together separately from other family members – Deceased died in house of appellant where both were living together – Deceased was last seen with the company of accused prior to her death – Medical evidence proves death to be homicidal – Strangulation marks/finger prints found on both side of deceased's neck – Accused failed to discharge his burden to explain cause of death of his wife and neither produced any evidence that some third person entered into the house and caused death – In statement u/S 313 also, accused failed to provide any explanation how his wife died – Evidence on record shows that there was no good relations between accused and his deceased wife – Circumstances shows and prosecution has established beyond all reasonable doubt that it was accused alone who committed the offence – Appeal dismissed: *Lakhan Prasad Mishra Vs. State of M.P., I.L.R. (2018) M.P. 1783 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 106 – Conviction – Life Imprisonment – Appreciation of Evidence – Circumstantial Evidence – Burden of Proof – Held – Apex Court has held that in case of unnatural death of wife of

accused in a room occupied only by both of them and no evidence of anybody else entering the room has been established and facts relevant to cause of death, being only known to accused, has not been explained by him, strong presumption that accused murdered his wife will apply following the principle u/S 106 of the Evidence Act – Onus is on the appellant to prove otherwise – In the present case, facts are the same – Prosecution has proved its case basing circumstantial evidence, beyond reasonable doubt – Appeal dismissed: *Narayan Singh Vs. State of M.P., I.L.R. (2018) M.P. *53 (DB)*

– Section 302 r/w 34 – Appeal against conviction – Witness stated that the appellants assaulted the deceased with an axe whereas according to the post-mortem report no such injury was found on the body of deceased which could be caused by sharp cutting weapon – No indication of dragging was found in the post mortem report – According to eyewitness, deceased was assaulted with heavy log on the back but no such injury was found on the back of the deceased – Evidence of eyewitnesses regarding the injuries caused to the deceased is not found corroborated by the post mortem report – Chain of circumstantial evidence is broken – There is no evidence of last seen against the appellants to connect them with crime – Conviction and sentence for offence u/S 302 r/w Section 34 of the IPC is set aside: *Kallu @ Kammod Rawat @ Kalyan Vs. State of M.P., I.L.R. (2017) M.P. 912 (DB)*

– Sections 302/34, 394/34 & 449 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Appreciation of Evidence – Circumstantial Evidence – Last Seen Evidence – Robbery and murder of three persons – Death sentence by trial Court – Acquittal by High Court – Held – Information of entry and exit of accused persons from crime scene was intimated to complainant by witnesses before filing FIR but there is no whisper of the same in FIR, creating suspicion over testimony of last seen witnesses – Deliberate delay in recording statements of witnesses regarding last seen circumstances – Statements were clearly an afterthought – Grave suspicion regarding recovery of ornaments and their identification – Recovery of blood stained weapons and clothes are doubtful – Further, delay in arrest despite clear knowledge of address of accused persons casts a serious doubt over prosecution case – High Court rightly acquitted the accused – Appeals dismissed: *Ashish Jain Vs. Makrand Singh, I.L.R. (2019) M.P. 710 (SC)*

– Sections 302/34, 376 D & 201 – Circumstantial evidence – Conviction – Parameters laid down: *In Reference Vs. Rajesh Verma, I.L.R. (2016) M.P. 2582 (DB)*

– Sections 302, 120-B & 201 – Murder – Circumstantial Evidence – Held – In case of circumstantial evidence, not only various links in chain of evidence should be clearly established but complete chain must be such as to rule out the likelihood of

innocence of accused – In present case, only circumstances of last seen together cannot by itself be made basis for conviction: *Kishan Singh @ Krishnapal Singh Vs. State of M.P., I.L.R. (2017) M.P. 2739 (DB)*

– Sections 302, 120-B & 201 – Murder – Conviction – Circumstantial Evidence – Evidence of Last Seen Together – Held – As per medical evidence, homicidal death not proved and in absence of such, appellants cannot be convicted merely on last seen theory – Unexplained delay in recording statement of prosecution witnesses and on their part in disclosing the fact of last seen together to police – No conclusive proof to establish link connecting appellants with the offence – Appellants entitled to benefit of doubt – Conviction set aside – Appeals allowed: *Kishan Singh @ Krishnapal Singh Vs. State of M.P., I.L.R. (2017) M.P. 2739 (DB)*

– Section 302/149 & 148 – Murder – Seizure of Weapons – Circumstantial Evidence – Proof – Held – Seizure of weapons from appellants not supported by witnesses – As per FSL report, no blood found on any seized weapon – Circumstantial evidence regarding seizure is inconclusive, immaterial and is unable to establish any link between appellants and the incident of murder: *Sakharam @ Bagad Vs. State of M.P., I.L.R. (2017) M.P. 2445 (DB)*

– Section 302 & 201 – Murder of own daughter aged about 8 months – Conviction – Circumstantial Evidence – Held – Motive of crime and desire for killing the infant was proved by oral and documentary evidence that accused suspected fidelity of Anita Bai (mother of deceased) and declined the deceased to be his own daughter – Deceased was last seen with the accused – Accused was present in the house when the infant was sleeping – Cloth piece in burnt condition showing a circular noose is suggestive of strangulation – Dead body was secretly cremated without intimating others – Finger prints of accused was found on the kerosene Bottle which was seized on the memorandum of accused himself– It was also proved that bones which were sent by the police were of a child aged about 6-8 months – No contradiction between marg intimation report and testimony of Anita Bai – Independent witness also corroborated the testimony of Anita Bai which was not been rebutted in cross-examination– Circumstantial evidence proves beyond reasonable doubt the involvement of accused with the offence– No reason or evidence on record to disbelieve the testimony of Anita Bai – Trial Court rightly convicted the accused – Appeal dismissed: *Anil Pandre Vs. State of M.P., I.L.R. (2018) M.P. 114 (DB)*

– Section 302 & 201 – Murder – Conviction – Last Seen Together – Held – At 7 pm, deceased went with appellant to consume liquor and subsequently dead body of deceased was found in the next morning – As per postmortem report, death occurred around 4 to 5 am and at this time, appellant was seen coming from scene of occurrence – Proximity between time when deceased was last seen with accused

and time of death of deceased is duly established by prosecution evidence – Appellant rightly convicted – Appeal dismissed: *Arun Shankar Vs. State of M.P., I.L.R. (2017) M.P. *152 (DB)*

– Section 302 & 201 – Murder – Death Sentence – Facts – Deceased, wife of the appellant/accused – Murdered by the appellant/husband on the Railway Track by smashing her face & head on the stones lying on the track – Motive – Jewellery of the deceased was deposited by her with her sister – Trial Court – Death sentence – Reference & appeal – No eye witness – Circumstantial evidence – Extra judicial confession – Motive not established – Jewelleries as per the prosecution witnesses itself was returned back to the deceased 8 days prior to the incident – Material & Independent witnesses not examined – Testimony of Madhuri (PW-4), daughter of the deceased & appellant, full of embellishments, exaggeration & material discrepancies – FSL report not supporting the prosecution case – Ocular evidence not supported by medical evidence – Appellant/accused not medically examined – Serious discrepancies in evidence of IO – Chain of events not complete – Appellant acquitted of the charge – Judgment of conviction & sentence set aside – Reference rejected – Appeal allowed: *In Reference Vs. Phool Chand Rathore, I.L.R. (2017) M.P. *20 (DB)*

– Sections 302, 300 & 201 – Murder Case – Circumstantial Evidence – Held – Circumstances proved against appellant lead to only one conclusion that appellant committed murder – Appellant/Accused made extra-judicial confession – Nothing on record to show that there was no premeditation or incident took place because of any sudden or grave provocation, in a heat of passion – Manner in which offence committed, would certainly fall within Section 300 IPC – By burning the dead body, appellant has caused disappearance of evidence of offence – Judgment and sentence affirmed – Appeal dismissed: *Bhagwan Singh Vs. State of M.P., I.L.R. (2018) M.P. 564 (DB)*

– Section 302 & 307 – Presumption – Last Seen Together – Murder – Conviction – Circumstantial Evidence – Held – Deceased and injured are the driver and conductor of Truck – From statement of witnesses, it is clear that deceased and the injured were last seen in company with the present appellant and soon thereafter dead body of deceased was found – It was admitted that truck broke down, which was repaired by the appellant and thereafter, deceased remained in company of appellant – Appellant was also identified before the Court by the injured witness – Looking to the evidence against appellant, it is established that deceased was last seen alive with appellant and it was them and no other person who must have caused his death, it can be presumed on basis of the oral and circumstantial evidence – Appellant rightly convicted – Appeal dismissed: *Phool Singh Vs. State of M.P., I.L.R. (2017) M.P. 3064 (DB)*

– Sections 302, 363, 366, 376-A, 376-AB & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(n) & 6 – Rape and Murder – Minor Girl of 4½ years – Circumstantial Evidence – DNA Test – Held – Existence of motive, last seen theory and recovery of body and clothes of deceased were established beyond reasonable doubt – DNA found on clothes and body of deceased matched with the one of appellant – Circumstantial evidence forming a complete chain, proving that it was appellant who committed the offence – Appellant rightly convicted – Appeal on point of conviction dismissed: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Sections 302, 363, 376(2)(i) & 201 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5 & 6 – Rape and Murder of Minor Girl – Circumstantial Evidence – DNA Test – Held – For offence u/S 302/201 IPC, last seen evidence to an extent is established – Blood found on shirt of accused matched with DNA profile of deceased – Chain of circumstances established by prosecution beyond reasonable doubt but not one of the rarest of rare case – Life imprisonment awarded instead of death sentence – Reference is answered in negative while appeal partly allowed: *In Reference Vs. Shyam Singh @ Kallu Rajput, I.L.R. (2019) M.P. 1301 (DB)*

– Section 302 & 364-A – Abduction & Murder – Circumstantial Evidence – Appreciation of Evidence – Deceased, a 14 years old boy was abducted and subsequently murdered – Offence registered against Sharik, Athar Ali and Salman – Acquittal from trial Court – Appeal against acquittal – Held – So far as evidence of last seen together, eye witness Pankaj (cousin of deceased) deposed that he saw accused persons in motor cycle alongwith deceased but he never disclose the same knowing that his brother is missing till dead body was found – His testimony is not reliable – Similarly, recovery of body at the instance of Sharik is also doubtful – Hence appeal against Sharik and Salman dismissed – Further held – Call for ransom made to parents of deceased and through IMEI number it was traced that it was mobile set of Athar Ali and it was also established that he used the mobile set with a fake sim to make the calls – There is clinching evidence against Athar Ali and his involvement in crime cannot be brushed aside – Appeal against Athar Ali is allowed – Sentence of life imprisonment imposed: *Laxmi Verma (Smt.) Vs. Sharik Khan, I.L.R. (2017) M.P. 1978 (DB)*

– Sections 302, 364-A, 201 & 120-B – Kidnapping & Murder of Minor Boy – Conviction – Death Sentence – Circumstantial Evidence – Presumption – Held – Case based on circumstantial evidence – No eye witness – As per postmortem report, cause of death due to cut of neck by sharp cutting object – As per DNA report, DNA of hairs found in fingers of deceased was similar to DNA profile of

appellant – Having proved the factum of kidnapping for ransom, inference of consequential murder of kidnapped person is liable to be presumed – Substantive evidence on record to establish kidnapping of deceased followed by his murder at the hands of appellants – Conviction upheld – Appeals dismissed: *In Reference Vs. Rajesh @ Rakesh, I.L.R. (2017) M.P. 2826 (DB)*

– Section 302 & 376 – Circumstantial Evidence – Circumstances against the accused – Firstly, the accused chased the prosecutrix when she left the house – Secondly, he was found by a witness coming out of the place of incident dusting his clothes – Thirdly, dead body was recovered at his instance – Fourthly, several injuries were found on the body of the deceased and semen and sperms were found in her vaginal swab – Fifthly, death was homicidal and blood was oozing out of the wounds of the deceased – Sixthly, a full pant having stains of blood was recovered from the accused – Held – The chain of circumstances is complete and accused was held guilty of Sections 376(2)(i) & 302 of IPC and Section 6 of POCSO Act – Death sentence confirmed: *State of M.P. Vs. Veerendra, I.L.R. (2016) M.P. 2595 (DB)*

– Sections 302 & 376 – Rape and murder – Circumstantial evidence – Law discussed: *Ram Sunder Sen Vs. Narender @ Bode Singh Patel, I.L.R. (2016) M.P. 341 (SC)*

– Sections 302, 376(AB), 363, 366 & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(m) & 6 – Circumstantial Evidence – DNA Test – Rape & Murder of minor girl aged 5 years – Held – Certain minor discrepancies and contradictions in statement of witnesses will not demolish the whole story of prosecution – Link of offence with appellant and chain of events duly established through DNA test, CCTV footage, Test Identification Parade, last seen theory and recovery of dead body of victim – Conviction upheld: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Sections 302, 376(2)(F), 376(2)(I), 376(2)(N), 377 & 201 – Circumstantial Evidence – DNA Report – Held – Appellant raped and murdered his own 6 yrs. old minor daughter – DNA taken from the source of deceased matched with the DNA profile of appellant – FSL report duly corroborated by testimony of the Doctor – Appellant had refused for postmortem of the deceased to be conducted and intentionally demolished the room where offence was committed – Appellant rightly convicted: *Afjal Khan Vs. State of M.P., I.L.R. (2019) M.P. 1265 (DB)*

– Section 302 & 384, Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 and Evidence Act (1 of 1872), Section 27 – Robbery and Murder – Conviction – Confessional Statement – Chain of Circumstantial Evidence – Test Identification Parade – Last Seen – A person booked a taxi disclosing his name to be Ajay and subsequently dead body of taxi driver was found – Later, it was

revealed that actual name of Ajay was Jitendra/Appellant – On interrogation, appellant gave a confessional statement u/S 27 of Evidence Act – Key of car (taxi) and its registration papers were recovered from appellant – Appellant did not produce any defence witnesses – Held – There is no Ocular Evidence and case depends upon various circumstances – Prosecution witness Rakesh stated that he met appellant with deceased but he did not identify the appellant when he was present in Court – No identification parade was conducted by Police – Factor of "last seen" is not proved beyond doubt – There is uncorroborated testimony of prosecution witnesses – Independent witnesses had turned hostile – No fair investigation was done by Police – Confessional Statement of accused, recovery and seizure of key and documents of car is not proved beyond doubt – Chain of circumstances is not complete – Since prosecution could not prove all the circumstantial evidence beyond doubt, the false defence taken by appellant cannot be used as an additional link – Trial Court committed gross error in convicting appellant without any substantive evidence – Appellant acquitted – Appeal allowed: *Jitendra @ Jeetu Vs. State of M.P., I.L.R. (2017) M.P. *93 (DB)*

7. Common Intention/Unlawful Assembly

– Section 302/34 – Appreciation of Evidence – Common Intention – Held – To invoke Section 34 IPC it must be established that the criminal act was done by more than one person in furtherance of common intention of all – Presence of appellant No. 2 has been established by consistent evidence of eye witnesses and admittedly, he was armed with rifle, thus sharing the common intention – Prosecution witnesses clearly stated that appellant No. 2 fired gun shot by his rifle – High Court rightly convicted him under the aid of Section 34 IPC – Appeal dismissed: *Rameshwar Vs. State of M.P., I.L.R. (2019) M.P. 2213 (SC)*

– Section 302 r/w 34 – Murder – Common Intention – Held – Common intention is the question of fact – It is subjective but can be inferred from facts and circumstances of the case: *Sheru @ Mahendra Singh Vs. State of M.P., I.L.R. (2017) M.P. 3073 (DB)*

– Section 302 r/w 34 – Murder – Conviction – Appreciation of Evidence – Held – Appellants came on the spot together, appellant no.2 caught hold of deceased from his back and appellant no.1 inflicted knife blows on his chest and abdomen – Statement of prosecution witnesses duly corroborated by FIR – No material discrepancies in statement of witnesses – Multiple injuries on vital parts of body – Lungs, ribs, liver and spleen of the deceased were cut – Intention was to commit murder – Appellants rightly convicted – Appeal dismissed: *Sheru @ Mahendra Singh Vs. State of M.P., I.L.R. (2017) M.P. 3073 (DB)*

– Section 302/34 – Common Intention – Held – Evidence shows that accused persons came to the house of deceased and started a fight, went back and brought gupti and ballam from their house and committed the offence – Facts and circumstances shows that there was pre-concert of mind and accused have acted in furtherance of common intention: *Karun @ Rahman Vs. State of M.P., I.L.R. (2018) M.P. 542 (DB)*

– Section 302/34 & 457 – Murder – Conviction – Eye Witness – Appreciation of Evidence – Held – All accused persons gone to hospital where deceased was admitted and all of them exhorted each other to kill him and in pursuance of such exhortation, fatal axe blow was given by co-accused and all of them fled together pushing the complainant – Injured eye-witness supported the prosecution version and categorically narrated role of appellants in commission of crime – It is established from evidence that appellants gathered at spot with premeditation and acted in unison and concert with common intention of killing the deceased – No illegality committed by trial Court in convicting appellants – Appeals dismissed: *Mukesh Sharma Vs. State of M.P., I.L.R. (2018) M.P. 2230 (DB)*

– Section 302/149 – Murder – Conviction– Unlawful Assembly – Common Object – Appreciation of Evidence – Eye Witnesses – Held – Once it is established that unlawful assembly has a common object, it is not necessary that all persons must be shown to have committed some overt act – Principle of constructive liability for being part of unlawful assembly would apply - They can be convicted u/S 149 IPC – Further held, discrepancies in description of use of weapon hitting which part of the body would not make the entire prosecution case unreliable – Evidence of eye witnesses are consistent and coherent and showed sufficient facts and circumstances to constitute the common object of the unlawful assembly to murder the deceased persons – Prosecution successfully proved its case beyond reasonable doubt – Appeals dismissed: *Munna Singh Vs. State of M.P., I.L.R. (2018) M.P. 127 (DB)*

– Section 302 & 149 – Unlawful Assembly – Principle of Vicarious Liability – Applicability – Held – Presence of accused in house of deceased, the fact that they were armed, fact that all of them entered the house at midnight and fact that two out of those five accused used their deadly weapons to cause death of deceased, was sufficient to attract principle of vicarious liability u/S 149 IPC – High Court erred in acquitting respondents – Order of conviction restored – Appeal allowed: *State of M.P. Vs. Killu @ Kailash, I.L.R. (2020) M.P. 761 (SC)*

– Sections 302/149, 147 & 148 – Common Intention – Held – Accused persons gathered on spot and incident took place because of continuation of construction of a wall despite being stopped by accused persons – It is not established that there was any common object formed by all appellants to murder the deceased

persons with any prior planning: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

– Sections 302/149, 147 & 148 – Direct Evidence – Seizure of Weapon – Held – It is a case of direct evidence where testimonies of two eye witnesses gets corroborated with medical evidence – Seizure of weapon on the disclosure statement of accused has also been proved by Investigating Officer – After scanning the entire evidence, it is established that among all appellants, three of them in furtherance of common intention murdered the deceased, hence are hereby convicted u/S 302/34 IPC – Other appellants acquitted of the charge – Appeals disposed of: *Asghar Ali Vs. State of M.P., I.L.R. (2017) M.P. 3080 (DB)*

– Sections 302/149, 148 & 304 Part II – Conviction – Life Imprisonment – Appreciation of Evidence – Common Object – Looking to the evidence on record, it is proved beyond doubt that appellant Harkishan, Toran and Kallu assaulted deceased whereby he succumbed to injuries on spot – During Pendency of this appeal, Kallu expired, thus his appeal abates – Toran gave lathi blows without any common intention to kill, his conviction modified to one u/S 323 IPC – Appellant Harkishan gave the fatal blow to deceased causing contusion on tempo-parietal region, doctor found that bones below the wound were broken and brain was also found damaged, thus deceased died due to head injury – Harkishan was responsible for death of deceased – Further held – In the present case, quarrel started on spur of moment thus it cannot be concluded that Harkishan intended to kill the deceased especially when no deadly weapon was used by him and there is no allegation against him of repeated assault – Harkishan wrongly convicted u/S 302, conviction modified to one u/S 304 Part II IPC – Appeal partly allowed: *Bhagwanlal Vs. State of M.P., I.L.R. (2017) M.P. 1199 (DB)*

– Sections 302/149, 323/149 & 148 – Appreciation of Evidence – Injured Eye Witnesses – Weapon of Offence – Held – Statement of prosecution witnesses, particularly injured eye witnesses are trustworthy – Minor contradictions about use of a particular weapon by appellants will not cause any dent on credibility of their statements – Individual conduct of each of the appellants in relation to use of a particular weapon is immaterial – Appellants being member of unlawful assembly acted with common object cannot wriggle out of the clutches of vicarious liability enshrined in Section 149 IPC – Appellants rightly convicted – Appeal dismissed: *Manbodh Singh Vs. State of M.P., I.L.R. (2019) M.P. 637 (DB)*

– Section 302 & 302/34 – "Common Intention" – Appellant Bhagwan cannot be implicated for common intention u/S 34 IPC unless evidence demonstrates that there was meeting of minds of both appellants prior to or during course of incident and having knowledge that main assailant was hiding firearm in his clothes with intention

to commit murder – No direct or indirect evidence to show that appellant Bhagwan had knowledge of Ramsiya carrying firearm – All important element of common intention u/S 34 IPC is not found established beyond all reasonable doubt – Conviction of appellant Bhagwan is set aside: *Ramsiya Vs. State of M.P., I.L.R. (2018) M.P. 1976 (DB)*

– Section 302 & 302/34 and Arms Act (54 of 1959), Section 25(1)(a) – Murder – Conviction – Common Intention – Acquittal of an accused Rajendra by High Court – Appeal against – Held – Conduct of the accused reveals nothing to draw inference that he was taken by surprise when co-accused opened fired the deceased – He immediately escaped from place of occurrence, indicative of his awareness of common intention – Sequence of events shows pre-concerted plan and prior meeting of minds – If common intention is established in the facts and circumstances, no overt act or possession of weapon is required – Order of acquittal passed by High Court is set aside – Order of conviction restored: *Rajkishore Purohit Vs. State of M.P., I.L.R. (2017) M.P. 2299 (SC)*

– Sections 302, 302/34, 325 & 325/34 – Common Intention & Pre-meditation – Held – It is a case of free fight – Appellants did not come on spot together – Every accused liable for his individual act – No evidence of pre-concert of mind and that appellants Sanju and Mukesh had common intention or has instigated or exhorted the main accused Gopi to kill the deceased – They have not assaulted the deceased – Sanju only grappled with deceased and Mukesh has assaulted the complainant whereas Gopi gave knife blows to deceased – Conviction of Gopi u/S 325/34 IPC is set aside and is convicted u/S 302 IPC, Mukesh is acquitted u/S 302/34 and is convicted u/S 325 IPC and Sanju is acquitted for charges u/S 302/34 and 325/34 – Appeal of Sanju allowed – Appeals of Gopi and Mukesh partly allowed: *Sanju @ Sanjay Vs. State of M.P., I.L.R. (2017) M.P. 2470 (DB)*

– Sections 302, 304 Part II & 34 – Murder or culpable homicide not amounting to murder – Accused no. 2 caught hold of the deceased from behind while the accused no. 1 inflicted one single injury from knife, in the right side of the chest of the deceased – The knife punctured his lungs and then his heart and bleeding from the wound resulted in death by shock and hemorrhage – Held – There was no common intention and premeditation between the accused persons, the conviction of accused no. 1 u/S 302 of IPC is set aside and he is convicted u/S 304 part II – Similarly, conviction of accused no. 2 is also converted from Section 302 r/w Section 34 of IPC to one u/S 304 Part II of IPC – Sentences of life imprisonment imposed on the accused are set aside: *Lakhan Vs. State of M.P., I.L.R. (2016) M.P. 2330 (DB)*

– Sections 302, 304 Part II & 323/34 – Conviction – Life Imprisonment – Appreciation of Evidence – Common Intention – Dispute regarding possession of the

land – Appellants were grazing their cattle over the land in dispute when the complainant party objected and sudden altercation started – Parties of both sides were injured and one person (Jeevan) died – Held – Death of deceased was caused because of penetration wound/stab on chest which was homicidal in nature as proved by the prosecution by medical evidence – No material contradictions and omissions in statement of prosecution witnesses – Incident had taken place suddenly without any premeditation and in the heat of passion – Appellants assaulted simultaneously but it does not mean that they started assaulting with common intention to cause death of the deceased and therefore in such circumstances all the accused persons are responsible for their individual acts – Appellants cannot be convicted for committing murder as there was no intention to cause death or to cause any injury which may be sufficient to cause death – It is not a case of murder but it is a case of culpable homicide not amounting to murder – Only appellant Prem Singh inflicted fatal injury and therefore he is liable to be convicted u/S 304 Part II IPC – Rest of the appellants/ accused be convicted u/S 323 IPC – Appeal partly allowed: *Prabhulal Vs. State of M.P., I.L.R. (2018) M.P. 782 (DB)*

– Section 302 & 341 r/w 34 – Common Intention – Conduct of Accused – Held – Regarding money transactions, previous enmity between A-1 and deceased and 2-3 days prior to incident there was arguments and quarrel between them – During incident, A-2 and A-3 only alleged to caught hold of deceased – They have not attacked the deceased – Inference of common intention is to be drawn from conduct of accused – No evidence by prosecution that there was prior meeting of minds and that A-2 and A-3 were having knowledge that their brother A-1 was armed with Katta and would be committing murder of deceased – Conviction of A-2 and A-3 u/S 302/34 & 341 IPC is set aside: *Balvir Singh Vs. State of M.P., I.L.R. (2019) M.P. 1200 (SC)*

8. Compliance U/s 157 CrPC

– Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Compliance – Delay – Effect – Held – Apex Court concluded that if delay is caused in sending FIR to Magistrate and prosecution fails to furnish reasonable explanation then ipso facto, same cannot be a ground for throwing out prosecution case if the same is otherwise trustworthy and credible upon appreciation of evidence – Mere delay in sending the report, itself cannot lead to conclusion that trial is vitiated or accused entitled to be acquitted – On delayed dispatch of FIR, some prejudice have to be proved by accused – In present case, non-compliance of Section 157 Cr.P.C. has not caused any prejudice to appellants: *Mansingh Vs. State of M.P., I.L.R. (2019) M.P. 1120 (DB)*

– Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Information to Magistrate – Held – Non-compliance of Section 157 Cr.P.C. is not sufficient to ignore the whole prosecution evidence: *Bhagchandra Vs. State of M.P., I.L.R. (2017) M.P. 3094 (DB)*

9. Delay in FIR

– Section 302 – Delay in FIR – Held – It is not expected from the sole eye witness, a 70 yrs. old rural woman to leave the dead bodies of family members at the spot and go 10 km. to police station to lodge the complaint – Delay properly explained and is not fatal for prosecution: *State of M.P. Vs. Chhaakki Lal, I.L.R. (2019) M.P. 507 (SC)*

– Sections 302, 304 Part I & 307 – Appreciation of Evidence – Delay in FIR and Recording Statement of Witnesses – Trial Court convicted the accused u/S 304 Part I and 307 IPC – In appeal, High Court acquitted the accused – State Appeal – Held – There were material contradictions in statements of eye witnesses – 5 out of 12 prosecution witnesses turned hostile – FIR lodged after 13 days of incident – There was delay in – No plausible explanation for such huge inordinate delay – High Court rightly held that guilt of accused not established beyond reasonable doubt – Accused rightly acquitted – Appeal dismissed: *State of M.P. Vs. Nande @ Nandkishore Singh, I.L.R. (2018) M.P. 617 (SC)*

10. Delay in Recording Statements

– Section 302/34 – Murder – Conviction – Private Complaint by Wife of Deceased – Delay in Recording Statements – Effect – Held – Statement relating to last seen together was recorded after a considerable delay of 6 months from the death of deceased – Apex Court held that evidence of last seen is a weak type of evidence – Looking to the fact of delay in recording statements of witnesses who deposed about the act of appellants and fact that they are interesting witnesses, it is not safe to place reliance on evidence of said witnesses to hold appellants guilty beyond reasonable doubt – Investigating officer also admitted that during investigation he found nothing against these appellants which shows their involvement in crime – Name of these appellants not mentioned in the report and statement of witnesses – Guilt must be proved beyond all reasonable doubt and burden of proving the same lies on prosecution, it never shifts – Appellant acquitted from the charge – Appeal allowed: *Laxman Vs. State of M.P., I.L.R. (2018) M.P. 1556 (DB)*

– Section 302/149 & 148 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Recording of Statement – Delay – Effect – Held – Prosecution satisfactorily established that appellants assaulted deceased because of which he

died – Interference on ground that statements were belatedly recorded is unwarranted – Apex Court concluded that if prosecution evidence is worthy of credence, the point that investigation was faulty or statements u/S 161 Cr.P.C. were recorded belatedly, pales into insignificance: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

11. DNA Test/Report

– Section 302 – DNA – Held – DNA of accused matched with DNA obtained from vaginal slide swab of deceased – DNA report only corroborates circumstances of intercourse – In absence of the motility test of sperm to correlate the time of intercourse, it could not be established that accused was present with deceased at the time of incident – Motility of sperm – Forensic/pathological aspects, discussed and explained: *In Reference Vs. Ankur @ Nitesh Dixit, I.L.R. (2019) M.P. *68 (DB)*

– Section 302 – Eye Witnesses and DNA Profile – Held – Due to less quantity of blood on incriminating articles, DNA profile not detected and was not sufficient to match, merely on this ground, testimony of eye witnesses cannot be discarded: *Bhagchandra Vs. State of M.P., I.L.R. (2017) M.P. 3094 (DB)*

– Section 302 & 376 A and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5 & 6 – DNA Test – Conclusive Proof – Held – Opinion of Forensic Science Expert that Y-Chromosome of DNA profile of accused/appellant matches with DNA profile found from underwear of victim and vaginal slide, is conclusive proof that accused is the one who violated the victim – Apex Court has held that DNA report must be accepted as scientifically accurate and it is an exact science: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Sections 302, 376(A), (D) & 449 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – Rape & Murder – Minor Girl – Conviction – Death Sentence – Circumstantial Evidence – DNA Test – Held – Appellant is uncle of the victim – Medical evidence proves that victim was sexually assaulted before murder – As per DNA report, which is a scientific evidence, appellant's sperm and semens found in vaginal swab and clothes of victim and there is no explanation by appellant in this regard – DNA report is reliable to sustain conviction – Conviction can be based on circumstantial evidence – Conviction upheld – Death sentence set aside and life imprisonment imposed – Appeal partly allowed – Reference discharged: *Vinay Vs. State of M.P., I.L.R. (2017) M.P. 2752 (DB)*

12. Dying Declaration

– Section 302 – Murder – Conviction – Prosecution witness not supporting the prosecution story – Effect of – Dying Declaration – Credibility – Trial Court held

that appellant poured kerosene on his wife and set her ablaze, whereby she died because of the burn injuries – Held – It is trite law that if prosecution witness is not supporting the prosecution case and such witness is not declared hostile, the defence can rely on the evidence of such witness which would be binding on the prosecution – In the present case, two prosecution witnesses went against the prosecution story and these witnesses were not cross-examined by the prosecution nor they were declared hostile – In such circumstances, statements of these two witnesses cannot be easily brushed aside, they create serious doubt on the prosecution story and makes it vulnerable – Further held – Dying declaration was not read over and explained to the injured and thus such document cannot be relied and was not safe to convict the accused – Appellant should get the benefit of doubt – Judgment of conviction set aside – Appeal allowed: *Sanju Vs. State of M.P., I.L.R. (2018) M.P. 953 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Dying Declaration – Identity of Accused – Appellant gave 11 blows with knife to deceased, who was taken to hospital where he lodged dehati Nalishi – Doctor recorded the dying declaration – Held – Evidence of the eye witnesses is duly corroborated by the testimony of the other prosecution witnesses and by Dehati Nalishi – Further held – Dying declaration is a substantive piece of evidence and accused can be convicted for the offence u/S 302 IPC on the sole basis of dying declaration – Dying declaration can be used for corroboration of eye witnesses – Deceased has stated in the dying declaration that he was assaulted by Pappu son of Dayaram Lahri, and in terms of such submission, he gave a complete address and identification of appellant – Doctor also confirmed that at the time of recording of dying declaration, deceased was in a fit condition to give his statement – Dying declaration is trustworthy and is acceptable – Trial Court rightly convicted the appellant – Appeal dismissed: *Pappu @ Chandra Prakash Vs. State of M.P., I.L.R. (2017) M.P. 1724 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Life Imprisonment – Dying Declaration – Reliability – Allegation that appellant poured kerosene on deceased and set her ablaze – Held – All witnesses turned hostile and case solely based on dying declaration – Three dying declaration by deceased carrying material contradictions, omissions, discrepancies and exaggerations – As per medical evidence, deceased was 98% burnt, both her palm were burnt and in such condition, victim cannot be in a coherent state of mind to make dying declaration nor could have signed the same – Dying declaration is an important piece of evidence which if found reliable and voluntary could be the sole basis of conviction – Evidence on record and dying declaration do not inspire confidence for basing conviction – Conviction set aside – Appeal allowed: *Sukhdev Vs. State of M.P., I.L.R. (2017) M.P. *163 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 32 – Murder – Conviction – Dying Declaration – Appreciation of Evidence – Deceased was set ablaze on denial

of giving money to appellant for liquor – Dying declaration recorded by Naib Tehsildar – Held – Deceased was alive for 18 hours after recording dying declaration and doctor also deposed that he was fully conscious and was fit/capable of making statement – Dying declaration against appellant is reliable and is fully corroborated by statements of eye witnesses – Appellant rightly convicted – Appeal dismissed: *Ramanda @ Yashvant Gond Vs. State of M.P., I.L.R. (2017) M.P. 2489 (DB)*

– Section 302 & Exception 4 to Section 300 – Dying Declaration – Recovery of Weapon of Offence – Direct Evidence – Absence of Motive – FIR by accused himself, admitting that he caused multiple injuries to his mother and step sister – Held – Death of mother due to septicemia, developed due to infection and gangrene on those body parts of the deceased where accused had caused injuries – No record to show that same developed due to post operational complications – Further held – Dying declaration cannot be discarded on the ground that the same was not recorded in question-answer form – Dying declaration of the deceased (mother of accused) was recorded by the Executive Magistrate after obtaining certificate of fitness which is sufficient and can be the sole ground for convicting the accused – Further held – When there is ample unimpeachable ocular evidence and the same has been corroborated by medical evidence, non-recovery of weapon does not affect the prosecution case – Non recovery of weapon and absence of motive would not be material where the case is based on direct evidence – Accused failed to prove that the incident occurred under sudden and grave provocation – Appellant acted in a cruel manner and caused multiple stab injuries to the deceased resulting in her death – Trial Court rightly convicted the appellant – Appeal dismissed: *Bablu alias Virendra Kumar Vs. State of M.P., I.L.R. (2018) M.P. *14 (DB)*

– Section 302/34 & 449 and Evidence Act (1 of 1872), Section 32 – Murder – Conviction – Dying Declaration – Credibility – Deceased set ablazed – Conviction based on dying declaration recorded by investigation officer and corroborated by oral dying declaration given by deceased to her brother and father – Held – After incident, deceased survived for seven days and died on eighth day – No explanation on record that why Executive Magistrate was not called by Investigating Officer for recording dying declaration, instead police officer went himself to record the same which do not carry signature/attestation of Doctor – Certification was given by Doctor on a separate paper and not on dying declaration – Independent witnesses turned hostile – Dying declaration is suspicious and even corroborative evidence was also not trustworthy – Conviction set aside – Appeal allowed: *Kadwa Vs. State of M.P., I.L.R. (2018) M.P. *63 (DB)*

– Section 302/149 & 148 and Evidence Act (1 of 1872), Section 32 – Oral Dying Declaration – Credibility – Held – There is no absolute rule of law that dying declaration cannot form sole basis of conviction – In instant case, both parents of

deceased deposed about dying declaration in harmony without any material inconsistency in their statements, which would destroy its evidentiary value: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Sections 302, 304-B, 498-A & 201 and Dowry Prohibition Act (28 of 1961), Section 4 – Conviction – Appreciation of Evidence – Wife died due to burn injuries within two years of her marriage – Husband, mother-in-law and two sister-in-law were charged for the said offence – Held – Evidence on record clearly shows that mother-in-law of deceased use to torture her for demand of dowry and use to ill-treat her – It is also established that mother-in-law assaulted her and set her ablaze and murdered her – It is further clear from dying declarations that husband and both sister-in-law were not present with mother-in-law on the spot nor they supported for committing the offence – Dying declaration have been corroborated with testimony of brother and mother of deceased – In the police statements as well as in evidence, brother and mother of deceased did not allege anything against husband and both sister-in-laws which creates reasonable doubt in their favour – Husband and both sister-in-law are hereby acquitted from the charges – Conviction and sentence of Mother-in-law upheld – Appeal partly allowed: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

– Sections 302, 326(A) & 460 – Appreciation of Evidence – Dying Declaration – Acid Attack – Held – Dying declaration can be given highest probative value and offers a strong foundation for conviction of appellant – Dying declaration of deceased unerringly point to appellant as one who caused the death – No conjectures, surmise or inference in narration of witnesses who saw appellant in the act and were themselves the victim of the acid attack – Evidence is consistent and reliable – Conviction upheld: *Yogendra @ Jogendra Singh Vs. State of M.P., I.L.R. (2019) M.P. 955 (SC)*

– Sections 302, 354 & 449, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Child Witnesses – Conviction – Life Imprisonment – Appreciation of Evidence – Murder of one Suggabai by knife blows inflicted by the appellant in front of two child witnesses – Held – Incident on 22.04.2005 and victim died on 24.04.2005 and during this period various dying declaration were recorded – Held – After the incident, police was called and Dehati Nalishi was registered which was considered to be the first dying declaration – After the incident, victim ran to her neighbours and narrated the whole incident, such statement is also covered u/S 32 of the Evidence Act – Subsequently, Dying Declaration was recorded by Tehsildar – Statement u/S 161 Cr.P.C. was also recorded which was her last statement and can be treated as dying declaration – No contradiction and omission in

the said dying declarations and are duly supported by the eye witnesses Jyoti (niece of deceased) and Ritesh (son of deceased) both aged 12-13 yrs. and are competent to understand the happenings occurred before them – Dying Declarations found reliable – Further held – Conviction can be based on the testimony of child witnesses which also corroborates the dying declaration – Trial Court rightly convicted the appellant – Appeal dismissed: *Shrawan Vs. State of M.P., I.L.R. (2018) M.P. 740 (DB)*

13. Extra Judicial Confession

– Section 302 – Extra Judicial Confession – Held – Apex Court concluded that extra judicial confession, if made voluntarily in a fit state of mind, can be relied by Trial Court – Appellant made extra judicial confession voluntarily to his cousin and real brother, thus cannot be ignored – Extra judicial confession proved by prosecution witnesses: *Kanhaiyalal Vs. State of M.P., I.L.R. (2019) M.P. 2575 (DB)*

– Section 302 and Evidence Act (1 of 1872), Section 6 – Murder – Life Conviction – Extra Judicial Confession – Admissibility in Evidence – Husband assaulted his wife, inflicted number of injuries with sickle and also thrown a stone on her head – Wife died – Appellant's mother lodged the FIR – Held – From the Rojnamcha it is proved that husband /appellant himself had gone to police station on the date of incident and informed that he himself committed murder of the deceased/wife, which is subsequently corroborated by evidence of the SHO and report of mother of appellant – Such statement of appellant given to the Station Incharge is admissible u/S 6 of the Evidence Act – Such statement can also be treated as extra Judicial confession – Trial Court rightly convicted the appellant and awarded proper sentence – Appeal dismissed: *Khemchand Kachhi Patel Vs. State of M.P., I.L.R. (2018) M.P. 747 (DB)*

– Section 302/34 – Murder – Extra Judicial Confession – Credibility – Held – Extra judicial confession of the wife of deceased has to be rejected because being wife of deceased, she did not disclosed the alleged facts to police immediately after incident and depose the same after 4-5 months when she filed a private complaint – Act of appellants as narrated by the wife is also against human nature, accused persons generally do not make any extra judicial confession or confess before the wife of deceased: *Laxman Vs. State of M.P., I.L.R. (2018) M.P. 1556 (DB)*

14. Hostile Witness

– Section 302 – Hostile Witness – Held – From the testimony of hostile witnesses, it is established that accused was present at the time of incident at his home and when they reached the spot deceased was lying in wounded condition – No material contradiction or omission in the evidence of hostile witnesses so as to discard

their entire testimony – There is no law that entire testimony of a hostile witness has to be disbelieved – Conviction upheld – Appeal dismissed: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

– Section 302 – Hostile Witnesses – Credibility – Held – Evidence of a person does not become effaced from record merely because he has turned hostile – His deposition must be examine more cautiously – Apex Court concluded that deposition of hostile witness can be relied upon at least upto the extent he supported the prosecution case: *Brijlal Vs. State of M.P., I.L.R. (2019) M.P. 177 (DB)*

– Section 302/149 & 148 – Appreciation of Evidence – Hostile Witnesses – Held – Statement of hostile witness is admissible to the extent it does not disturb the credibility of part of his statement – Apex Court concluded that, portion of evidence of such hostile witnesses, which is consistent with case of prosecution/defence may be accepted – In instant case, witness has not assigned any reason as to why investigating officer would record something which was not stated by him – However, existence of signature of witness in dehati nalishi is clearly established – Witness trying to conceal material truth to protect the appellants: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

15. Identity of Accused

– Section 302 & 323 – Murder – Conviction – Testimony of witnesses – Identity of Accused – Ocular & Medical Evidence – Effect – Held – It is undisputed that appellant/accused was not known to prosecution witnesses prior to the incident and it appears that for the first time accused entered into the said village – Complainant and prosecution witnesses identified the accused before the trial Court – No such fact came in cross-examination of prosecution witnesses which would indicate that they were not in a position to identify the accused before the Court – No doubt created regarding identity of accused – Further held – Oral evidence were supported by medical evidence – It was proved that present appellant caused injuries due to which deceased died: *Santosh Vs. State of M.P., I.L.R. (2017) M.P. 2735 (DB)*

16. Injury & Weapon

– Section 302/149 – Appreciation of Evidence – Injuries – Held – Doctor opined that death was caused by injury no.1 which could only be inflicted by a knife or gupti and not by hand or lathi – Prime witness of prosecution PW-1 stated that appellants gave blows with fists and legs to deceased – In FIR also it was stated that appellants beaten the victim with hands and feet and no weapon was ascribed to have been held by them – Prosecution evidence is full of contradictions and hence not reliable and trustworthy: *Shanker Vs. State of M.P., I.L.R. (2018) M.P. 2301 (SC)*

17. Insanity/Unsoundness of Mind

– Section 302 & 84 and Evidence Act (1 of 1872), Section 105 – Murder – Conviction – Life Imprisonment – Insanity/Unsoundness of Mind – Proof of – Burden –Appellant killed his wife hitting her by a 'musal' – Plea of unsoundness of mind – Held – When a person pleads for defence u/S 84 IPC, burden of proof in its strictest sense, is upon accused to establish the exception – In the instant case, there is no specific documents regarding unsoundness of mind of appellant but the evidence establishes that appellant has been a mental patient since last 8-9 years and he was being treated at different places for his mental illness – At the time of incident, due to unsoundness of mind, he was incapable of knowing the nature of the act and that is why he was doing acts which were contrary to law which constitute insanity – Entitled for benefit u/S 84 IPC – Appellant acquitted of the charge – Appeal allowed: *Ramcharan Yadav Vs. State of M.P., I.L.R. (2017) M.P. *108 (DB)*

– Sections 302, 304 Part I & II – Mental Disorder – Epileptic Psychosis; Pre Epileptic Mental Ill health and Post Epileptic Mental Ill-health – Discussed and explained: *Naval Singh Vs. State of M.P., I.L.R. (2019) M.P. 1286 (DB)*

18. Mercy Petition/Delay

– Section 302 – Death Sentence – Mercy Petition – Delay in Disposal – Effect – Murder of wife and five children – Held – Where death sentence has to be executed, the same should be done as early as possible and if mercy petition has not been forwarded by State for 4 years and no explanation is submitted, such delay is inordinate and unexplained – Petitioner is behind bars for almost 14 yrs., this factor is also to be considered – Regardless of brutal nature of crime, not a fit case for execution of death sentence and accordingly commuted to that of life which shall mean entire remaining life – Review Petition and Writ Petition partly allowed: *Jagdish Vs. State of M.P., I.L.R. (2019) M.P. 1358 (SC)*

19. Motive & Intention

– Section 302 – Injury – Intention/Motive – Held – As per postmortem report, there were four injuries on vital part of body i.e. head by blunt and hard object – Injuries prove that deceased was subjected to repeated blows by appellant – He had intention to kill his wife: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

– Section 302 – Intention to Kill – Held – Looking to conduct of appellant that after quarrel he left and came back with his father and other companions and gave as many as 11 blows to deceased on chest, abdomen and on other vital parts of the body which caused injuries to many vital parts like omentum, large intestine and

small intestine etc – In these circumstances it is proved beyond doubt that appellant had intended to kill the deceased: *Pappu @ Chandra Prakash Vs. State of M.P., I.L.R. (2017) M.P. 1724 (DB)*

– Section 302 – Murder – Accused hurled country made bomb on deceased – Accused caused incised injuries to victim, which were intentional and sufficient to cause death in the ordinary course, even if the death was not intended – Offence falls within clause thirdly of Section 300: *State of M.P. Vs. Goloo Raikwar, I.L.R. (2016) M.P. 2881 (SC)*

– Section 302 r/w 34 & 394 r/w 397 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Accused persons entered into the house for committing a robbery – During the course of robbery they inflicted Bakka (Dagger) blow on throat of the deceased – After hearing the noise of crowd, all the culprits went to the 1st floor and jumped outside the house however, accused/ appellant Ballu @ Jamnaprasad already came out of house and was held by the crowd – Robbed articles recovered from accused duly identified by the PW-1 – Thereafter his absence at the spot when the deceased was killed creates a doubt as to whether he intended to kill the deceased – He is not liable to be convicted u/S 302 r/w Section 34 of the IPC – Other accused are convicted u/S 302 of the IPC & 394 of the IPC r/w Section 397 of the IPC & u/S 11 & 13 of the MPDPVK Act: *Narendra @ Chunna Kirar Vs. State of M.P., I.L.R. (2017) M.P. 364 (DB)*

– Sections 302/149, 148 & 304 Part II – Intention & Motive – No injury found on vital part of body of deceased – No intention of murder – Cause of death was multiple injuries on various parts of body by hard and blunt objects, hemorrhage and excessive bleeding – No internal injury found – Although appellants acted together and assaulted deceased with knowledge that injuries caused by them were likely to cause death – Conviction altered to one u/S 304 Part II IPC – Appeal partly allowed: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Section 302/149, 304(Part I) & Exception 4 to S.300 – Motive/Intention – Premeditation – Held – In a wordy quarrel, appellant inflicted farsi blow on head of deceased – One injury inflicted by farsi which shows that appellant has not taken undue advantage – Death committed in sudden fight without premeditation – Exception 4 to Section 300 IPC attracted – Conviction modified to one u/S 304 (Part I) IPC – Appeal allowed: *Bhagirath Vs. State of M.P., I.L.R. (2019) M.P. 520 (SC)*

– Section 302 & 304 Part I – Conviction – Testimony of Eye Witness – Intention – Held – Daughter of deceased was eye witness, who deposed the incident and accordingly Prosecution evidence established that when deceased (wife of accused) was cooking food, there was a quarrel between appellant and deceased and

in that event appellant had taken out kerosene from stove and sprinkled the same on the deceased and ablaze her, then appellant tried to save her because he doused the fire – Appellant was also admitted in hospital and he received burn injuries on his hands and chest – In such circumstances, it could not be said that there was an intention of appellant to kill the deceased – Offence committed by appellant would fall u/S 304 Part I IPC – Conviction and sentence for offence u/S 302 set aside – Appellant hereby convicted u/S 304 Part I IPC and is sentenced for 10 years RI – As appellant has completed 11 years of jail sentence, hence directed to be released – Appeal partly allowed: *Khadak Singh @ Khadak Ram Vs. State of M.P., I.L.R. (2018) M.P. 558 (DB)*

– Section 302 & 304 (Part I) – Injury – Intention – Held – Deceased suffered single gun shot injury and entry wound was back of his left thigh which shows that shot was fired from his back side – No blackening, charring on exit wound but was present on entry wound which shows that shot was fired within range of 6-8 feet – It can be inferred that there was no intention of murder, if it had been so, injury could have been caused on upper limb, above waist of deceased – High Court rightly converted the conviction from Section 302 to one u/S 304 (Part I) IPC – Appeal dismissed: *State of M.P. Vs. Gangabishan @ Vishnu, I.L.R. (2019) M.P. 4 (SC)*

– Section 302 & 304 Part I – Murder – Conviction – Life Imprisonment – Intention – Appellant inflicted single blow of axe to deceased – Held – Intention has to be gathered from circumstances and the force that has been used by accused to inflict injury – Deceased was a boy of tender age who had come to his friend's house to take books, there was no quarrel, no altercation for anything – Appellant inflicted severe axe blow using sharp side of axe on temporal region of deceased whereby his jaw was cut and he died on spot – Appellant rightly convicted u/S 302 IPC – Appeal dismissed: *Ram Karan Yadev Vs. State of M.P., I.L.R. (2018) M.P. 1779 (DB)*

– Section 302 & 304 Part I – Murder – Intention – Evidence on record shows that after receiving first blow on head, unarmed deceased fall down and thereafter appellant again gave three blows while deceased was lying down – Cause of death was injuries to vital organs like right kidney and liver leading to heavy internal hemorrhage – Mode of death was shock – Appellant had intention to cause death – Case would not fall into any category u/S 304 IPC: *Madhav Prasad Vs. State of M.P., I.L.R. (2017) M.P. 1934 (DB)*

– Section 302 & 304 Part I – Sudden Provocation – Single Blow – Held – Complainant and accused party ploughing their respective field, indulged into verbal altercation and sudden fight broke over the issue of common passage (Medh) – No pre-meditated assault – No repeated blows by accused – Case falls under Section 304 Part I and appellants are accordingly convicted – Further held – Since accused

undergone more than 10 yrs. imprisonment, deserves to sentence for period already undergone – Appeal allowed: *Raghuveer Singh Vs. State of M.P., I.L.R. (2018) M.P. 2219 (DB)*

– Sections 302, 304 Part I & II and 300 Exception 4 – Motive & Intention – Held – Appellant, a patient of "Epileptic Psychosis" all of a sudden, provoked by anger assaulted the deceased without premeditation in the heat of passion and without having taken undue advantage in unusual manner though his act was cruel, the act would fall u/S 304 Part I IPC because his case is covered under Exception 4 of Section 300 IPC – After committing murder, he did not flee away but was wandering in the courtyard – Conviction converted to one u/S 304 Part I IPC – Appeal partly allowed: *Naval Singh Vs. State of M.P., I.L.R. (2019) M.P. 1286 (DB)*

– Section 302 & 304 Part II – Child/Interested Eye Witnesses & Medical Evidence – Motive & Intention – Held – Appellant, during a domestic quarrel, assaulted his wife with firewood in presence of his son and daughter, causing her death – Testimony of eye witnesses (son & daughter) cannot be discarded on ground that they are related/interested witnesses – Statement of Doctor corroborates testimony of eye witness (son) – Prosecution case duly supported by medical evidence – Appellant absconded after the incident – Appellant rightly held guilty of murder but looking to nature of injuries, cause of death and facts and circumstances, case falls under purview of Section 304 Part II IPC – Conviction u/S 302 converted into one u/S 304 Part II IPC – Life imprisonment converted to 10 years RI i.e. the period already undergone – Appeal partly allowed: *Munna @ Manshalal Vs. State of M.P., I.L.R. (2019) M.P. 1149 (DB)*

– Section 302 & 304 Part II – Dying Declaration – Intention – Conviction u/S 302 IPC – Held – As per dying declaration, quarrel was going on between deceased and her husband, when appellant (sister-in-law of deceased) arrived and she threw burning stove on deceased which caused burn injuries and resulted in her death – No evidence of any strained relations between appellant and deceased – No evidence to conclude that appellant had any such intention to kill deceased – When a person throws a burning stove on a person there is a knowledge that the act is likely to cause death – Appellant committed offence u/S 304 Part II IPC – Conviction altered to one u/S 304 Part II IPC – Appeal partly allowed: *Kalabai Vs. State of M.P., I.L.R. (2019) M.P. 1973 (SC)*

– Section 302 & 304 Part II – Intention – During altercation among the conflicting parties, appellant inflicted a ballam blow to deceased on left side of his chest causing one penetrating wound resulting in his death – Held – Fight was sudden and not premeditated – Appellant has not inflicted any other serious injury except a contusion – Ingredients of murder as per Section 300 IPC is missing – No intention of

appellant to murder the deceased or to cause him such bodily injury as is likely to cause death – Conviction u/S 302 set aside and is convicted u/S 304 Part II IPC: *Tularam Vs. State of M.P., I.L.R. (2018) M.P. 2789 (SC)*

– Section 302 & 304 Part II – Intention – Held – Appellant inflicted single blow with lathi, other blows on body of deceased was with use of hands – No iota of evidence to show that appellant beaten his wife with intention to cause her death – Conviction u/S 302 altered to one u/S 304 Part II IPC – Appeal partly allowed: *Sunder Lal Mehra Vs. State of M.P., I.L.R. (2019) M.P. 903 (DB)*

– Section 302 & 304 Part II – Murder – Conviction – Appreciation of Evidence – Held – Incident took place on a petty issue of scuffle between children – Incident happened in a fit of rage where no sign of preparation, pre-plan or premeditation existed – Only one injury inflicted – Considering the nature of incident and manner of causing the injury and the fact the incident happened in heated spur of moment, the case falls in the purview of Section 304 Part II – Conviction u/S 302 set aside – Ends of justice would serve if appellants are convicted u/S 304 Part II and sentenced for 11 years 6 months the period already undergone – Appeal partly allowed: *Bilavar Vs. State of M.P., I.L.R. (2018) M.P. 137 (DB)*

– Section 302/304 (Part-II) – Murder – Deceased, 70 years old, quite weak and frail lady was assaulted by appellant with help of honey flower stick on her back due to suspicion of witchcraft – Death – Doctor evidence – Death due to haemorrhage from lungs and liver – Held – As the assault was not pre-meditated and initially there was no intention to kill and even honey flower stick was not a deadly weapon and the region of the body assaulted was back and lumber region, so the intention of appellant was to punish the deceased and not to kill her – Act of the appellant would fall u/S 304(Part-II) and not u/S 302 of IPC – Conviction u/S 302 converted into Section 304(Part-II) of IPC – Sentence of life imprisonment converted into sentence of 8 years – Appeal partially allowed: *Shivprasad Panika @ Lallu Vs. State of M.P., I.L.R. (2018) M.P. 1732 (DB)*

– Section 302 & 304 Part II – Murder – Motive/Intention to Kill – Held – It is true that appellant was not armed with any weapon when he met the deceased, suddenly appellant picked up a piece of wood and gave blows to deceased – Appellant gave repeated blows, he might not have any intention for causing death, but intention arose immediately before the incident – Case does not fall under any exceptions of Section 300 IPC – Offence u/S 302 IPC made out – Appellant rightly convicted and sentenced u/S 302 IPC – Appeal dismissed: *Hari Vs. State of M.P., I.L.R. (2017) M.P. *138 (DB)*

– Section 302, 304 Part II r/w 34 – Appeal Against Acquittal – Appreciation of Evidence – Intention – Acquittal from trial Court – In State appeal, High Court

convicted appellants u/S 304 Part II r/w 34 IPC – Challenge to – Held – No motive to kill the deceased – Intention was to teach a lesson to deceased due to previous enmity – Evidence of Doctor does not say that injuries were sufficient in ordinary course of nature to cause death – Deceased survived for 14 days from date of incident – Proper appreciation of evidence by High Court – Conviction affirmed - Appeal dismissed: *Pooranlal Vs. State of M.P., I.L.R. (2017) M.P. 2915 (SC)*

– Section 302 & 304-A – Murder – Conviction – Life Imprisonment – Solitary Blow – Intention & Motive – Appreciation of Evidence – Held – Existence of previous enmity between accused and deceased regarding partition of agricultural land – When deceased was sitting quietly near his field for grazing of his cattle, accused arrived there and attacked him with axe and gave a single blow in neck which caused his death – Circumstances in which blow was delivered clearly betrayed the intention to cause death – No provocation offered by deceased – No quarrel or fight – It was a cold blooded and premeditated murder – No discrepancy between statement of eye witness and medical evidence with regard to fatal injury – Act would not fall u/S 304-A IPC under the garb of solitary blow – Apex Court held that there is no fixed rule that whenever a single blow is inflicted, Section 302 IPC would not be attracted – Trial Court rightly convicted the appellant – Appeal dismissed: *Pooranlal Vs. State of M.P., I.L.R. (2017) M.P. 1944 (DB)*

– Sections 302, 323 & 304 Part II – Murder – Motive/Intention to kill – Previous Enmity – Held – There was no previous enmity between deceased and appellant – Two injuries were caused on his head due to which deceased died – As per the facts of the present case, the appellant has no motive to kill the deceased, there appears to be no intention as well – Case falls under provisions of Section 304 Part II IPC – Conviction converted into one u/S 304 part II IPC – Conviction u/S 323 upheld – Appeal partly allowed: *Santosh Vs. State of M.P., I.L.R. (2017) M.P. 2735 (DB)*

– Sections 302, 324 & 304 Part I – Conviction – Testimony of Eye Witness – Intention – Held – In the present case, appellant thought that deceased and eye-witnesses were talking ill about him, he without any premeditation inflicted a single knife injury to the stomach of deceased – Although injury turned out to be fatal due to septicemia and hemorrhage resulting in death, but it is difficult to hold that appellant had any intention to kill the deceased – Appellant not guilty of culpable homicide in fact can be and is convicted u/S 304 Part II i.e. culpable homicide not amounting to murder – Since appellant already suffered jail sentence for more than 10 years, he directed to be released – Appeal partly allowed: *Suryabhan Choudhary Vs. State of M.P., I.L.R. (2018) M.P. *23 (DB)*

20. Name of Accused not in FIR

– Section 302/34 – Murder – Conviction – Name of Accused not in FIR – Held – It is settled law that FIR is not an encyclopedia of the entire case and any omission in the FIR cannot be said to be fatal to the prosecution case as the involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR – Impact of omission has to be considered in the backdrop and totality of the circumstances – Merely because the name of the accused was not mentioned in the FIR, it cannot be said that he was not involved in the incident – All witnesses were consistent with their testimony, there were no discrepancy regarding medical and ocular evidence – Prosecution version was substantially tallied with the medical evidence – Commission of offence is clearly established beyond reasonable doubt – Trial Court rightly convicted the appellants – Appeal dismissed: *Ajay Kol Vs. State of M.P., I.L.R. (2018) M.P. *2 (DB)*

21. Ocular/Medical Evidence

– Section 302/34 – Murder – Conviction – Eye Witness – Ocular and Medical Evidence – Conflict – Three eye witnesses in instant case, deposed that appellant No. 1 & 2 assaulted deceased by Ballam and Farsa respectively as a result of which he died on spot – Ballam seized from appellant No. 1 and Farsa seized from appellant No. 2 – Held – As per evidence of doctor, there was no penetrating wound on person of deceased – Prosecution has not produced the seized Ballam before doctor neither any question was asked to doctor as to whether such injuries could be caused by Ballam – Apex Court held that when medical evidence completely rules out all possibility of ocular evidence being true, the same may be disbelieved – No sufficient evidence to convict appellant No. 1 – Appellant No. 1 acquitted of the charge – Allegation against appellant No. 2 is proved by ocular and medical evidence, hence conviction upheld – Appeal partly allowed: *Brijendra Singh Vs. State of M.P., I.L.R. (2018) M.P. 1772 (DB)*

– Section 302/34 – Murder – Conviction – Eye Witness – Ocular and Medical Evidence – Conviction based on testimony of three eye witnesses which are supported by medical evidences – In case of conflict between ocular and medical evidence, ocular evidence has to be preferred unless medical evidence is of such a nature as makes the ocular evidence highly improbable – Doctor found 13 fractures and stated that injuries were sufficient in ordinary course of nature to cause death – Appellants brutally beaten the deceased with stick and stones with intention of causing death, case would fall under purview of 'thirdly' of Section 300 IPC – Appellants rightly convicted – Appeal dismissed: *Shishupal Singh @ Chhutte Raja Vs. State of M.P., I.L.R. (2018) M.P. 1740 (DB)*

– Sections 302, 148 & 149 – Conviction – Life Imprisonment – Appreciation of Evidence – Eye Witnesses – Held – Ocular evidence in relation to other accused persons is reliable and trustworthy except the evidence relating to accused person Kullu @ Kalka and Bablu @ Girvar as the eye witness has stated that both of them caused injuries to deceased by "Ballam" whereas doctor who conducted post mortem and the one who conducted MLC has not stated that there were any injuries which could be caused by "Ballam" – Conviction of Kullu and Bablu set aside – Conviction of rest of the accused persons upheld: *Pintoo @ Lakhan Singh Vs. State of M.P., I.L.R. (2018) M.P. 1223 (DB)*

– Sections 302 r/w 149 & 148 – Conviction – Life Imprisonment – Appreciation of Evidence – Eye Witnesses – Forensic Examination and Medical Report – Held – Both eye witnesses contradict each other about use and mode of using weapon by appellants – Eye witnesses specifically mentions fact of use of axe and farsa by accused persons but no injuries of incised wound were found in medical report – Blood group of blood stains found over stick (lathi) was not referred for chemical/forensic examination nor the same was matched with blood group of deceased or accused persons and in this respect no explanation has been offered by prosecution – Blood stained clothes of deceased were also not seized and sent for chemical examination – No conclusive inference can be drawn to prove the guilt of appellants u/S 302 IPC: *Raghuveer Singh Vs. State of M.P., I.L.R. (2018) M.P. 2219 (DB)*

– Sections 302/149, 324/149 & 325/149 – Murder – Conviction – Appreciation of Evidence – Injured/Interested Witnesses – Injuries & Medical Evidence – Held – Three simple injuries and one internal injury in abdomen – Evidence of injured prosecution witnesses duly corroborated by medical evidence – Victim/ deceased was operated for abdominal injury whereby he died after 20 days of incident – As per medical evidence, cause of death in postmortem report was failure in surgical operation – Homicidal death not proved – Conviction of each accused u/S 302/149 is erroneous and defective and is hereby set aside – Accused persons deserves to be and are convicted u/S 325/149 IPC and looking to their period of detention, are sentenced to period already undergone – Appeal partly allowed: *Patru Vs. State of M.P., I.L.R. (2018) M.P. 2239 (DB)*

– Section 302 & 341 r/w 34 and Arms Act (54 of 1959), Section 25(1A) & 27 – Eye Witnesses & Medical Evidence – Minor Contradictions – Held – Alleged inconsistencies between evidence of eye witnesses and medical evidence are minor contradictions – Consistent version of eye witnesses cannot be decided/doubted on touchstone of medical evidence – Oral evidence has to get primacy since medical evidence is basically opinionative – Further, when case is based on eye witnesses,

indecisive opinion given by experts (FSL Report) regarding arms, would not effect prosecution case – Conviction of A-1 affirmed: *Balvir Singh Vs. State of M.P., I.L.R. (2019) M.P. 1200 (SC)*

22. Plea of Alibi

– Section 302 – Plea of Alibi – Burden of Proof – Held – Once prosecution satisfactorily discharged its initial burden to establish presence of accused at the place of incident and his participation in the crime, onus shifts to accused to prove his plea of alibi – Accused failed to discharge his burden to prove the plea of alibi – Conviction upheld: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

– Section 302 – Plea of Alibi – Burden of Proof – Presumption – Murder of wife and daughters took place inside the house of appellant between 04:00-07:00 a.m. – Blood stained clothes recovered from same house for which no explanation by appellant – No signs of loot or dacoity – Presumption has to be drawn against appellant: *Kanhaiyalal Vs. State of M.P., I.L.R. (2019) M.P. 2575 (DB)*

– Section 302 and Criminal Procedure Code, 1973 (2 of 1974) – Plea of Alibi – Burden of Proof – Held – Once prosecution established a prima facie case, onus shifted on appellant to explain circumstances and manner in which deceased met homicidal death in matrimonial home as it was a fact specifically and exclusive to his knowledge – It is not a case of appellant that there had been an intruder in house at night – Appellant failed to furnish explanation u/S 313 Cr.P.C. therefore leaves no doubt for conclusion of his being the assailant of deceased: *Kalu alias Laxminarayan Vs. State of M.P., I.L.R. (2020) M.P. 555 (SC)*

– Section 302/149 & 148 – Appreciation of Evidence – Plea of Alibi – Held – No minutes, register or documentary evidence produced by defence to establish that appellant was present in meeting of Municipal Council and not at the scene of crime – Neither the Chairman of Council nor other representative who attended the meeting was called in witness box by defence to support the plea: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Sections 302, 376(AB), 363, 366 & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(m) & 6 – Plea of Alibi – Burden of Proof – Held – Appellant took the plea that he was under externment order and was at Burhanpur at his uncle's (Mama) home – No evidence produced by appellant, even his Uncle was not been examined – Appellant failed to discharge the burden: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

23. Rarest of Rare Cases/Death Sentence

– Section 302 – Death Sentence – Considerations – "Rarest of Rare" Case

– Held – Now-a-days reformative ideas are totally ineffective – Justice demands that Court should impose punishment befitting the crime so that it reflects public abhorrence of crime – Instant case falls in category of "rarest of rare" case – Considering all aggravating and mitigating circumstances in the case, death sentence confirmed: *Bhagchandra Vs. State of M.P., I.L.R. (2017) M.P. 3094 (DB)*

– Section 302 – Sentence – Murder of 4 persons including a child of three years – Trial Court awarded death sentence – Held – Incident is of 2006 – Looking to facts and circumstances and the passage of time, award of death penalty is not warranted and imposing sentence of life imprisonment would meet the ends of justice: *State of M.P. Vs. Chhaakki Lal, I.L.R. (2019) M.P. 507 (SC)*

– Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 354(3) – Death Sentence – Rarest of Rare Case – Held – Socio economic circumstances leading to commission of crime are relevant factor for determining award of sentence – Probability of reform and rehabilitation discussed – Case does not fall within "rarest of rare case" – Death sentence is unwarranted, hence modified to life imprisonment – Appeal partly allowed: *Kanhaiyalal Vs. State of M.P., I.L.R. (2019) M.P. 2575 (DB)*

– Section 302/34 & 201 – Death due to Burn Injuries – Conviction and Sentence – Oral Dying Declaration – Death Penalty – Husband, brother–in-law and mother-in-law were charged with the offence – Husband was awarded death sentence whereas other two accused were sentenced for life imprisonment – Held – It is alleged that husband sprinkled petrol on deceased and set her ablaze – No circumstantial evidence against brother–in-law and mother-in-law – Oral dying declaration of deceased against them is not reliable – Both are living separately from the deceased and except the oral dying declaration, there is no other evidence to connect them with the incident, benefit of doubt should be given to them – Evidence of cruelty by husband towards deceased, he did not even reached the spot nor accompanied the deceased to hospital – In forensic report, smell of petrol was found on under garments of deceased – Mother of deceased specifically stated that deceased told her that appellant husband sprinkled petrol on the deceased and set her ablaze, her testimony is reliable – Prosecution has proved the guilt of husband beyond reasonable doubt – Husband's conviction upheld whereas the conviction of brother-in-law and mother-in-law is set aside – Further held – Death penalty can be inflicted only on the gravest of the grave cases – Act of the appellant husband could not be termed as gravest of grave cases – Trial Court Committed error in awarding death sentence – Reference answered in negative – Husband's sentence modified to life imprisonment – Appeal filed by brother-in-law and mother-in-law allowed: *In Reference Vs. Mahendra Tiwari, I.L.R. (2017) M.P. 1243 (DB)*

– Sections 302/34, 376 D & 201 – Prosecutrix – Aged 10 years – Subjected to rape & murder – Three accused persons – Trial Court – Death sentence – Reference & appeal – Facts – Prosecutrix visiting shop of one of the co-accused persons for purchasing grocery items – Subjected to gangrape & murder by strangulation through rope – Dead body recovered in a Gunny bag from a well – Circumstantial evidence – Same Gunny bags & rope found from the house of one of the accused persons – Injuries on the body of accused persons found with no explanation – DNA profile from private part of prosecutrix matched up with DNA of all the three accused persons – Evil smell coming out from the wheat straw kept in the house of one of the accused persons where body of the prosecutrix was kept for sometime – Held – Circumstantial evidence is complete in all other hypothesis and it only leads to sole conclusion of guilt of the accused persons – Judgment of conviction pronounced by the Trial Court upheld – Rarest of Rare cases – Parameters – Individual role played by each of the accused persons in the crime is not clear – Sentence of death penalty commuted to life imprisonment – Appeal allowed as above and reference answered accordingly: *In Reference Vs. Rajesh Verma, I.L.R. (2016) M.P. 2582 (DB)*

– Sections 302, 326(A) & 460 – Acid Attack – Death Sentence – Rarest of Rare Case – Consideration – Held – Choice of acid by appellant do not disclose a cold blooded plan to murder the deceased, intention seems to have been to severely injure or disfigure the deceased – It is possible that what was premeditated was an injury and not death – No particular depravity or brutality in acts of appellant which warrants classification of this case as "rarest of the rare" – Death sentence modified to life imprisonment – Appeal allowed accordingly: *Yogendra @ Jogendra Singh Vs. State of M.P., I.L.R. (2019) M.P. 955 (SC)*

– Sections 302, 363, 366, 376-A, 376-AB & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(n) & 6 – Death Sentence – Aggravating and Mitigating Circumstances – Crime/ Criminal/Rarest of Rare Test – Held – Rape and murder for revenge and lust committed by appellant in a brutal manner with 30 injuries on minor girl – Case fully satisfy Crime Test i.e. 100% meaning thereby that aggravating circumstances of murder involves exceptional depravity – In respect of mitigating circumstances, prosecution failed to prove criminal antecedents of appellant, thus case fails to achieve yardstick of 0% Criminal Test: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Sections 302, 363, 366, 376-A, 376-AB & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(n) & 6 – Death Sentence – Rarest of Rare Case – "Standard of Residual Doubt" – Held – Few lapses in evidence gathered by prosecution and obtained circumstances – Although prosecution succeeded in proving the case beyond reasonable doubt but "standard of residual doubt" not

satisfied – No case of "rarest of rare case" category – Death Sentence imposed u/S 376-A IPC reduced to life imprisonment for remainder of appellant's natural life – Appeal partly allowed on quantum of sentence: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Sections 302, 364-A, 201 & 120-B – Kidnapping & Murder of Minor Boy – Sentence – Held – Looking to nature and way of committing offence, no possibility of any reform and rehabilitation of appellants – Appellants having no value for human life, carrying extreme mental perversion not worthy of human condonation – Approach of accused reveals a brutal mindset of highest order – Death sentence confirmed – Aggravating and Mitigating circumstances enumerated and discussed on facts of the case: *In Reference Vs. Rajesh @ Rakesh, I.L.R. (2017) M.P. 2826 (DB)*

– Sections 302, 366(A), 363, 364, 376(2)(f)/511 & 201 – Facts – Minor girl aged 7 years kidnapped and after sexual abuse, throttled to death – Trial Court – Conviction & sentence u/S 302, 363, 364, 376(2)(f)/511 and 201 – Death Sentence – Reference to High Court – Confirmation – Challenged in appeal – Held – Not rarest of rare case – Conviction confirmed – Death sentence commuted into imprisonment for actual period of 25 years – Sentence modified – Appeal dismissed: *Tattu Lodhi @ Pancham Lodhi Vs. State of M.P., I.L.R. (2017) M.P. 773 (SC)*

– Section 302 & 376A and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5 & 6 – Rape and Murder of Minor Girl of 4 years – Death Sentence – Appreciation of Evidence – Held – Prosecution evidence of last seen together, recovery of dead body on basis of disclosure statement of appellant, injuries on person of appellant as well as the DNA report conclusively proves that it was appellant who has committed such horrendous crime, violated the victim minor girl child and killed her – No evidence produced by appellant for his plea of alibi – Case falls in rarest of rare cases – Conviction and sentence upheld – Appeal dismissed: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Sections 302, 376(AB), 363, 366 & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(m) & 6 – Death Sentence – Aggravating and Mitigating circumstances – Held – Apex Court concluded that even if one circumstance favours the accused which includes his young age, capital punishment is not justifiable: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Sections 302, 376(AB), 363, 366 & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(m) & 6 – Death Sentence – Rarest of Rare Case – Aggravating and Mitigating circumstances – Held – Appellant aged about 20-21 years, not been convicted in any other cases – Pendency of criminal

cases cannot be a ground for imposing capital punishment – Chance of his reform cannot be ruled out – Death sentence can be imposed when there is no alternative, otherwise imposition of life imprisonment is the rule – Instant case does not fall in rarest of rare cases – Mitigating circumstances in favour of appellant – Capital Punishment modified to imprisonment of actual 35 years (without remission) – Appeal partly allowed: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Sections 302, 376(2)(F), 376(2)(I), 376(2)(N), 377 & 201 – Death Sentence – Mitigating & Aggravating Circumstances – Held – Mitigating factors has outweighed the aggravating factors, thus possibility of reformation cannot be ruled out as well as the possibility and options of other punishment are open – Mitigating and aggravating circumstances discussed and enumerated: *Afjal Khan Vs. State of M.P., I.L.R. (2019) M.P. 1265 (DB)*

– Sections 302, 376(2)(F), 376(2)(I), 376(2)(N), 377 & 201 – Death Sentence – "Rarest of Rare" test – Held – Murder not committed with extreme brutality or that the same involves exceptional depravity – There is every possibility of reformation and rehabilitation – Death Sentence converted to life imprisonment with a minimum of 30 yrs. imprisonment (without remission) – Appeal partly allowed: *Afjal Khan Vs. State of M.P., I.L.R. (2019) M.P. 1265 (DB)*

24. Related/Interested Witness

– Section 302 – Interested Eye Witness – Credibility – Held – Apex Court concluded that evidence as a whole having a ring of truth cannot be discarded merely because maker is a related witness – In instant case, evidence of three eye witnesses who are close relative of deceased are trustworthy and reliable and duly corroborated by evidence of Inspector – No reason to disbelieve their testimony: *Pooran @ Punni @ Bhure Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 1547 (DB)*

– Section 302 – Medical/Ocular Evidence & Related/Interested Witnesses – Held – Relation between appellant and deceased were inimical due to property issues – Prosecution witnesses are the interested witnesses – Contradiction between medical and ocular evidence cannot be ignored nor primacy can be given to ocular evidence because the said evidence is coming from related & interested witnesses – Not safe to record conviction: *Ajay Tiwari Vs. State of M.P., I.L.R. (2019) M.P. 2098 (DB)*

– Section 302 – Murder – Conviction –Appreciation of Evidence – Eye Witnesses – Related Witnesses – Motive – Recovery of Weapon – Dispute arose on account of failure of accused to pay price of eggs purchased from deceased – Accused

assaulted deceased with axe and inflicted 8 injuries on her head, neck and back – Held – There are 4 eye witnesses who deposed the incident and there is nothing to disbelieve their testimony – They cannot be disbelieved simply because they were related to deceased because it was natural for the family members to go together to collect firewoods – Mere failure of investigating agency to recover the weapon of offence would not discredit the entire prosecution case – Further held – Where a case is based on direct evidence, correctness of conviction cannot be tested on touchstone of motive – Accused rightly convicted – Appeal dismissed: *Ramsujan Kol @ Munda Vs. State of M.P., I.L.R. (2017) M.P. *110 (DB)*

– Section 302 – Murder – Conviction – Testimony of witnesses – Close Relative – Ocular & Medical Evidence – Absence of FSL Report – Effect – Held – Witnesses are close relatives of deceased, however their statements cannot be doubted only because of this reason – When statement of two prosecution witnesses were found reliable, there appears to be no effect if some independent witnesses were not examined by prosecution and on this ground no benefit can be given to appellants – Many injuries were found on body of deceased, statement of witnesses that they did not observe as to which side of axe was used, there appears to be no discrepancies between ocular evidence and medical evidence – In the present case, when ocular evidence is available, non-receipt of FSL report does not affect the case adversely – Trial Court rightly convicted and sentenced the appellants – Appeal dismissed: *Bhanwarlal Vs. State of M.P., I.L.R. (2017) M.P. 2495 (DB)*

– Section 302 – Sole Eye Witness – Appreciation of Evidence – Weapon of Offence – Appeal against acquittal – Held – High Court ignored credible evidence of sole eye witness which is corroborated by medical evidence and evidence of ballistic expert and unnecessarily laid emphasis on minor contradictions and omissions which are immaterial – Testimony of sole eye witness cannot be discarded merely because she is related to deceased – It is well settled that it is not the number but the quality of evidence that matters – Opinion of Ballistic expert tallying with the arms recovered from accused – Any slight variation in description of weapon is not fatal for prosecution – Delay in FIR properly explained – Judgment of acquittal suffers from serious infirmity and is set aside – Accused convicted u/S 302 IPC: *State of M.P. Vs. Chhaakki Lal, I.L.R. (2019) M.P. 507 (SC)*

– Section 302 – Triple Murder – Death Sentence – Appreciation of Evidence – Testimony of Related Eye-Witnesses – Held – Brutal murder of three persons by cutting their neck by axe in preplanned manner – No substantial contradiction and omission in testimonies of related eye witnesses and thus reliable – Ocular evidence duly corroborated by medical evidence – Conviction and death sentence upheld – Appeal dismissed: *Bhagchandra Vs. State of M.P., I.L.R. (2017) M.P. 3094 (DB)*

– Section 302/34 – Appreciation of Evidence – Eye Witness – Close Relative – Credibility – Held – Evidence establishes that prosecution witness (son of deceased) was present on the spot – His statement was supported by other eye witness – Only on ground of relationship, his testimony cannot be disbelieved – Prompt FIR was lodged in which, name of appellants were mentioned – Medical Evidence of Doctor who conducted post mortem supports the version of prosecution witnesses – Defence has not challenged the fact that appellant No. 1 & 3 reached to police chowki with weapon of offence which was then seized from their possession – Sufficient evidence to convict appellants – Appeal dismissed: *Mansingh Vs. State of M.P., I.L.R. (2019) M.P. 1120 (DB)*

– Section 302/34 – Appreciation of Evidence – Interested/Related Witnesses – Held – Courts below failed to scrutinize the prosecution evidence with utmost care when eye witnesses are closely related inter-se and to the deceased: *Baliraj Singh Vs. State of M.P., I.L.R. (2017) M.P. 2614 (SC)*

– Sections 302/149 & 148 – Conviction – Life Imprisonment – Appreciation of Evidence – Eye Witnesses – Held – Appellant along with five other co-accused persons formed an unlawful assembly and have fired gun shots on the deceased – Consistency in the statements of eye-witnesses – Evidence is fully corroborated with medical evidence and allegations in the FIR – Further held – Even if there are minor discrepancies in the statements of the eye witnesses, same cannot be given any undue importance – Interested witnesses cannot be presumed to be tainted instead upon corroboration, the same stands on the same footing as that of independent witnesses – Lower court rightly convicted the appellant – Appeal dismissed: *Vikram @ Manoj Jat Vs. State of M.P., I.L.R. (2017) M.P. 672 (DB)*

– Section 302/149 & 148 – Related Witness – Effect – Held – There is no rule of thumb that evidence of a related witness must be discarded solely on ground that he is a relative of deceased: *Ramesh Kachhi Vs. State of M.P., I.L.R. (2019) M.P. 2083 (DB)*

– Sections 302/149, 148, 450 & 323/149 – Murder – Conviction – Injured/ Interested witnesses – Held – Evidence of doctor established that PW-1, PW-2, PW-3 and PW-4 received injuries during the incident and they are injured eye witnesses – Although injured eye witness are the relatives of the deceased, their evidence cannot be discarded only because they are the interested eye witnesses – Principle of law is that testimony of injured eye witnesses would generally considered to be reliable: *Shankar Vs. State of M.P., I.L.R. (2018) M.P. 143 (DB)*

– Sections 302, 323 & 325 r/w 34 – Appreciation of Evidence – Interested Eye witnesses – Held – Presence of eye witnesses is clearly established in their

statements, appellants failed to rebut their testimony which was quite natural and without any material contradictions and omissions – Conviction can be based on the testimony of close relatives/interested witnesses – Further, no material contradictions between testimony of eye witnesses and medical evidence – Appellants rightly convicted – Appeal dismissed: *Chauda Vs. State of M.P., I.L.R. (2019) M.P. 471 (DB)*

– Section 302 & 324 and Evidence Act (1 of 1872), Section 134 – Murder – Conviction – Related/Injured Eye Witness – Credibility – Held – Evidence of injured eye witness has great importance – Conviction can be based on the testimony of the related witnesses – It is not necessary for prosecution to adduce independent witness in every case – Further held – U/S 134 of Evidence Act, no number of witness has been prescribed to prove any fact – Provision is based on consideration of quality of evidence and not quantity – In the instant case, testimony of eye witness/related witness finds corroboration with other prosecution witnesses – Medical evidence is also corroborated with ocular evidence – Appellant rightly convicted – Appeal dismissed: *Ashish @ Banti Sen Vs. State of M.P., I.L.R. (2018) M.P. *40 (DB)*

25. Right of Private Defence

– Section 302 – General Exception – Right of Private defence – It is not necessary for the appellant to take specific defence, but from the circumstances he can establish that he had acted in exercise of his right of private defence – To claim the right, the accused must show the circumstances available on record to establish that there was reasonable ground for the appellant to apprehend that either death or grievous hurt would be caused to him: *Gabbar Singh Vs. State of M.P., I.L.R. (2016) M.P. 3091 (DB)*

– Sections 302/149, 148, 324/149 & 97 – Murder – Conviction – Private Defence – In respect of share in land, previous enmity between Appellant no.1 and deceased – Plea taken by appellants that they attacked in private defence – Held – In order to claim right of private defence, appellants/accused persons have to show necessary material from record, either by themselves adducing positive evidence or by eliciting necessary facts from the witnesses examined for prosecution – Nothing on record to show that there was reasonable ground for appellants to apprehend death or grievous hurt would be caused to them by the deceased – Photographs of deceased clearly established the gruesome and brutal manner in which crime was committed – 18 injuries found on the body of deceased, all grievous in nature whereas injuries found on the body of appellants are old and simple in nature – Further held, right of private defence is not available to a person who himself is an aggressor – In the present case, there was a prompt FIR and testimony of the injured eye witness is duly corroborated by the other prosecution witnesses – Appellants rightly convicted – Appeal dismissed: *Ujyar Singh Vs. State of M.P., I.L.R. (2018) M.P. 970 (DB)*

– Section 302 & 304 Part I and Criminal Procedure Code, 1973 (2 of 1974), Sections 96, 97, 99 & 100 – Murder – Conviction – Right of Private Defence – Incident is said to have taken place in open place – When appellant inflicted axe blows to deceased, at that point of time there was no danger to the body of the appellant as he was standing about 20-25 feet away, so right of private defence is not available to the appellant – Apex Court held that right of private defence be used as preventive right and not punitive right – Further held – Appellant inflicted a blow of axe on the neck of the deceased who was armed with lathi – Appellant himself received injuries on his head and hence the offence committed would fall u/S 304 Part I IPC – Conviction u/S 302 set aside – Appellant convicted u/S 304 Part I IPC – Appeal partly allowed: *Dukhiram @ Dukhlal Vs. State of M.P., I.L.R. (2018) M.P. 773 (DB)*

– Section 302 & 323 and Arms Act (54 of 1959), Section 25(1-B)(a) & 27 – Murder – Conviction – Private Defence – Deceased who was unarmed, was chasing the appellant alongwith police personnels, when appellant turned around and fired upon him – Held – Relations between parties were inimical – Prosecution case based on direct evidence, where five eye witnesses were examined – Appellant has no right of private defence against an unarmed person, that too in presence of four armed policemen – Defence also failed to prove that any person from victim's party was armed even with a stick – Appellants rightly convicted – Appeal dismissed: *Deshpal Vs. State of M.P., I.L.R. (2017) M.P. 2717 (DB)*

26. Seizure/Production of Weapon

– Section 302 – Non-Production of Weapon – Apex Court concluded that the mere fact that weapon of assault was not recovered cannot demolish the prosecution case – Held – Seized weapon was not produced before Court but there is sufficient evidence to co-relate the appellant with commission of offence: *Chamar Singh Vs. State of M.P., I.L.R. (2019) M.P. 2347 (DB)*

27. Sentence

– Sections 302, 304 Part I & II – Sentence – Held – Since conviction is converted from Section 302 to Section 304 Part I IPC, sentence of life imprisonment commuted to period already undergone i.e. more than 10 yrs: *Naval Singh Vs. State of M.P., I.L.R. (2019) M.P. 1286 (DB)*

– Section 302 & 304 Part II – Sentence – Conviction modified from Section 302 IPC to one u/S 304 Part II IPC – Appellant was in custody since 12.06.1998 and remained in jail custody till 12.03.2004 – Appellant sentenced to the period already undergone: *Ram Sevak Vs. State of M.P., I.L.R. (2017) M.P. 1960 (DB)*

– Section 302 & 323 and Municipal Employees (Recruitment and Conditions of Service) Rules, M.P. 1968, Rule 9 & 10(2) – Moral Turpitude – Termination from Service – Petitioner was convicted and sentenced u/S 302 IPC whereby he was terminated from service – In appeal, conviction and sentence u/S 302/34 was set aside and petitioner was convicted u/S 323/34 IPC, whereby he approached the department vide an application for his reinstatement, which was been dismissed – Held – From the conjoint reading of Rule 9 and 10(2) of the Rules of 1968, it is established that petitioner who is sentenced to one year rigorous imprisonment for an offence which do not involve moral turpitude, there cannot be any legal impediment in his reinstatement – Respondents directed to reinstate the petitioner from the date of dismissal of his application – Petition allowed: *Shambhu Khare Vs. State of M.P., I.L.R. (2018) M.P. *11*

28. Single Injury

– Section 302 – Appeal Against Conviction – Deceased along with other witnesses sitting on a platform and they were talking to each other – At that time, the appellant and other co-accused came there and started abusing – When the deceased merely asked the appellant not to abuse, after hearing this the appellant got aggressive, took out a country-made pistol and without there being any retaliation or overt act on the part of either the deceased or any of the witnesses and without any provocation, he fired at the deceased causing injury on his chest – Death of the deceased was due to gun shot injury – Held – Merely because only one gunshot injury was caused to the deceased would not ipso facto take out the case from the purview of murder – Trial Court rightly convicted the appellant: *Gabbar Singh Vs. State of M.P., I.L.R. (2016) M.P. 3091 (DB)*

– Sections 302, 450 & 34 – Eye Witness – Injury – Held – Minor inconsistencies in statement of eye witness (daughter of deceased) – It is established that she was present in the room at the time of incident, accused came to the house of deceased and was quarreling with deceased and dead bodies of deceased was found in the house of deceased which proves that accused attacked the deceased – Eye witness is reliable – Further, it is also established that injuries were sufficient in ordinary course of nature to cause death – Apex Court concluded that even one injury on vital part of body may result in conviction u/S 302 – Conviction and sentence upheld – Appeal dismissed: *Shaitanbai Vs. State of M.P., I.L.R. (2020) M.P. 1720 (DB)*

29. Sole Witness

– Section 302/149 – Sole Witness – Held – There can be a conviction relying upon the evidence/deposition of sole witness, provided it is found to be trustworthy

and reliable and there are no material contradictions, omissions or improvements in case of prosecution: *Parvat Singh Vs. State of M.P., I.L.R. (2020) M.P. 1515 (SC)*

30. Statement U/s 164 CrPC

– Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 164 – Conviction – Life Imprisonment – Appreciation of Evidence – Statement u/S 164 Cr.P.C. & FIR – Credibility – Appellant charged with offence of murder of his step son – Held – Unfortunately, eye witnesses of incident who are the family members of appellant have turned hostile – Witness who lodged FIR denied the contents of the FIR – Contents of FIR cannot be taken as proved merely on the basis of evidence of Investigating Officer who recorded the FIR – Further held – Witnesses who supported prosecution case vide statement u/S 164 Cr.P.C. did not support the case during their deposition in witness box – Apex Court held that statement u/S 164 Cr.P.C. by a witness cannot be treated as substantive piece of evidence – Prosecution also failed to explain that why seized clothes/articles were not sent to FSL for examination – Trial Court committed error in holding appellant guilty for offence beyond reasonable doubt on the basis of statement u/S 164 Cr.P.C. and FIR – Conviction set aside – Appeal allowed: *Kanchedilal Thakur Vs. State of M.P., I.L.R. (2018) M.P. 1547 (DB)*

31. Test Identification Parade

– Sections 302, 376(AB), 363, 366 & 201 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5(m) & 6 – Test Identification Parade (TIP) – Held – TIP conducted by independent officer who deposed that witness identified the appellant by touching him from amongst other persons – Non-mentioning of TIP by such witness in deposition will not cause any dent to prosecution story – TIP established and not vitiated: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

32. Miscellaneous

– Sections 302, 304-B & 498-A r/w 34 – See – Criminal Procedure Code, 1973, Section 227 & 228: *Kattu Bai Vs. State of M.P., I.L.R. (2017) M.P. 3122*

– Section 302/34 – See – Criminal Procedure Code, 1973, Section 24: *P.S. Thakur (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 562*

– Section 302/34 – See – Criminal Procedure Code, 1973, Sections 227 & 228: *Jassu @ Jasrath Vs. State of M.P., I.L.R. (2016) M.P. 1803*

– Section 302/34 – See – Criminal Procedure Code, 1973, Section 228: *Bhawna Bai Vs. Ghanshyam, I.L.R. (2020) M.P. 788 (SC)*

– Section 302 & 201 – Murder – Death Sentence – Trial Court – Recommendation to State Government to reward Madhuri (PW-4) for her contribution in the case as she being daughter of the appellant/accused has shown exceptional courage to depose against her father – Court below ought to have refrained from making any such recommendation or comment in respect of any witness: *In Reference Vs. Phool Chand Rathore, I.L.R. (2017) M.P. *20 (DB)*

• **– Section 304-A** – Contributory Negligence – Doctrine of Reasonable Care – Held – It is not expected from children that they may take care of themselves while playing nearby road – Principle of contributory negligence would not apply in such offence – Doctrine of reasonable care imposes an obligation or a duty upon driver to care for the pedestrian on the road and this duty attains a higher degree where the pedestrian happens to be a child of tender years: *Durga Das Nawit Vs. State of M.P., I.L.R. (2017) M.P. *103*

– Section 304-A – Conviction – Benefit of Probation – Held – The Apex Court has held that in cases of rash and negligent driving resulting in death or grievous injury, deterrence ought to be the main consideration while sentencing the offender – Every driver should have fear in his psyche that upon conviction Court will not treat him leniently – Benefit of Probation could not be accorded to accused guilty u/S 304-A IPC: *Durga Das Nawit Vs. State of M.P., I.L.R. (2017) M.P. *103*

– Section 304-A – Conviction – Deceased child aged about 3 years died in accident by bullock cart driven by applicant – Held – Applicant admitted the seizure of bullock cart from his possession and he never denied the statement of prosecution witnesses that he was driving the offending bullock cart at the time of incident – Deceased died because of crush under the wheel – Trial Court rightly convicted the accused – Applicant is 58 years old and faced trial, appeal and revision for 18 years and was in custody for more than 84 days, sentence of RI reduced from one year to six months – Revision partly allowed: *Durga Das Nawit Vs. State of M.P., I.L.R. (2017) M.P. *103*

– Section 304-A – See – Criminal Procedure Code, 1973, Section 197, 200 & 482: *B.C. Jain (Dr.) Vs. Maulana Saleem, I.L.R. (2017) M.P. 1762*

– Section 304-A – See – Criminal Procedure Code, 1973, Section 482: *Lalit Kavdia (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 2107*

SYNOPSIS : Section 304-B

1. Appreciation of Evidence **2. Dowry**

3. Dying Declaration **4. Medical Evidence**

5. Presumption/Burden of Proof **6. Quashment**

7. Related/Interested Witness **8. Relative of Husband**

9. Miscellaneous

1. Appreciation of Evidence

– Sections 304-B & 498-A – Acquittal – No evidence of cruelty soon before death – No definite evidence of ill treatment having immediate proximity with date of death of deceased: *State of M.P. Vs. Ramkishan, I.L.R. (2016) M.P. 541 (DB)*

– Section 304-B & 498-A – Conviction – Appreciation of Evidence – Wife committed suicide by consuming poison within 2 years of marriage – Husband, father-in-law, mother-in-law and brother-in-law were charged for an offence u/S 304-B IPC – All accused persons were acquitted of the offence u/S 304-B IPC but husband/appellant was convicted and sentenced for an offence u/S 498-A IPC – Challenge to – Held – As husband was acquitted for offence u/S 304-B IPC, the cause of death of deceased is no longer in question and therefore whatever was told by deceased to her relatives regarding maltreatment at her matrimonial home would fall under the category of hearsay evidence and cannot be admissible – Mother of deceased categorically admitted that if accused persons has returned the articles given in dowry there would have been no dispute and in fact separate case was instituted for the sole object of recovering the said articles – Fact goes to show that no sooner the articles were returned, the case instituted for recovering the articles was withdrawn by the complainants and a compromise was entered into in the present case – Further held – There is no allegation that cruelty was inflicted upon deceased for extracting money – Appellant deserves benefit of doubt – Conviction set aside – Appeal allowed: *Rajesh Vs. State of M.P., I.L.R. (2018) M.P. 591*

– Section 304-B & 498-A – Conviction – Dowry Death within Seven Years of Marriage – Proof of – Appreciation of Evidence – Wife committed suicide by hanging herself – Allegation of dowry harassment and cruelty – Held – Evidence on record establishes the allegation of cruelty however demand of dowry and resultant death not proved beyond reasonable doubt – Factum of year of marriage not proved by prosecution by cogent and reliable evidence/document – Even father of deceased is not sure about the year of marriage – To attract provision of 304-B IPC, death within seven years of marriage not proved – Conviction u/S 304-B IPC is set aside and the one u/S 498-A IPC is affirmed – Appeal partly allowed: *Chetram Vs. State of M.P., I.L.R. (2018) M.P. 2480*

– Section 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Acquittal – Ground – Dowry demand – Four years back – Reiterated seven months

back – Thereafter no allegation of dowry demand or cruelty till incident – Held – "Soon before her death she was subjected to cruelty or harassment by her husband or any of his relative" is lacking: *State of M.P. Vs. Ramkishan, I.L.R. (2016) M.P. 541 (DB)*

– Section 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Dowry death – The cruelty, harassment and demand of dowry should not be so ancient, whereafter the couple and family members have lived happily – Such demand or harassment may not strictly and squarely fall within the provisions – Unless definite evidence led to show contrary: *State of M.P. Vs. Ramkishan, I.L.R. (2016) M.P. 541 (DB)*

– Section 304-B/34 & 498-A and Evidence Act (1 of 1872), Section 113-B – Dowry death by burning within seven years of marriage – Presumption – Appreciation of Evidence – Conviction – Held – In appreciation of the entire evidence available on record, the prosecution evidence failed to prove beyond reasonable doubt that soon before the death of the deceased or after the marriage deceased was subjected to cruelty or harassment in relation to demand of bicycle in dowry by the present appellants and deceased appellant/accused, thus the trial Court erred in taking resort of Section 113-B of the Evidence Act – Prosecution remained unsuccessful to rule out the possibility of an accidental death of deceased – Trial Court remained unable to properly and legally analyze the prosecution evidence available on record, and totally over looked the material contradictions among the depositions of P.W. 2, P.W. 3 and P.W. 7 and material improvements and exaggerations introduced for the first time in their Court's evidence – Appellant is acquitted from the charge of Section 304-B/34 and 498-A of I.P.C. – Appeal allowed: *Suresh Kumar Vs. State of M.P., I.L.R. (2017) M.P. 902*

2. Dowry

– Section 304-B/34 & 498-A and Dowry Prohibition Act (28 of 1961), Section 2 – Definition of "Dowry" – Held – Appellants failed to establish that demand of money was because of husband's unemployment or for starting new business – Such demand of money which has connection with marriage is squarely covered within definition of "Dowry": *Revatibai Vs. State of M.P., I.L.R. (2019) M.P. 1740 (DB)*

3. Dying Declaration

– Section 304-B & 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Quashing of Charge – Dying Declaration – Wife died due to burn injuries within seven years of marriage – Offence registered against husband, mother-in-law

and Jeth – Held – In dying declaration, wife although stated that she caught fire accidentally while she was cooking food but later on, when her parents arrived at hospital, she informed them that the applicants set her ablaze and she has given earlier dying declaration under the influence and threat of applicants – Parents of deceased and other witnesses have also stated that deceased was subjected to cruelty by applicants for demand of dowry – Probative value of earlier dying declaration would be considered on merits after completion of trial – Further held – At the stage of framing of charge, Trial Court is not expected to consider and scrutinize the material on record meticulously – If Judge forms an opinion that there is ground for presuming that accused has committed the offence, he may frame the charge – In the instant case, prima facie case is made out against the applicants – No illegality committed by trial Court – Revision dismissed: *Manohar Rajgond Vs. State of M.P., I.L.R. (2018) M.P. 608*

4. Medical Evidence

– Section 304-B – Dowry Death – Appreciation of Evidence – Medical Evidence – Held – Deceased wife died in matrimonial house in suspicious circumstances within seven years of marriage – Ante-mortem injuries not explained by accused husband – Doctor specifically opined the cause of death to be shock caused by poison which clearly negates the version/claim of appellant that when he alongwith his father and mother came home from their agricultural field, they found the deceased hanging and she was brought down by appellant – No ligature mark was found on neck of deceased in postmortem report, thus not a case of suicide – Prosecution established the case of dowry death whereby deceased was harassed, beaten and treated with cruelty – Conviction upheld – Appeal dismissed: *Krishna Gopal Vs. State of M.P., I.L.R. (2018) M.P. 2207*

5. Presumption/Burden of Proof

– Section 304-B – Burden of Proof – Presumption – Held – To attract mischief of Section 304-B IPC, initial burden is on prosecution to prove that death of wife has occurred within seven years of marriage and it is only after when such burden is discharged by leading cogent and reliable evidence, presumption of dowry death can be said to have arisen: *Chetram Vs. State of M.P., I.L.R. (2018) M.P. 2480*

– Section 304-B – See – Evidence Act, 1872, Section 113-B: *Megha Singh Sindhe (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1017*

– Section 304-B and Evidence Act (1 of 1872), Section 113-B – Dowry Death within Seven Years of Marriage – Conviction – Appreciation of Evidence – Presumption – Held – Prosecution failed to produce marriage card – Serious

contradiction in statements of prosecution witnesses regarding date/year of marriage – No reliable and cogent evidence to prove date of marriage – Prosecution case goes out of purview of presumption u/S 113-B of Evidence Act – Prosecution miserably failed to establish that incident had taken place within seven years of the marriage – Conviction u/S 304-B IPC cannot be upheld and is set aside: *Surendra Singh Vs. State of M.P., I.L.R. (2018) M.P. 2263*

– Section 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Presumption – Held – Prosecution failed to prove essential ingredients of Section 304-B and 498-A IPC, hence no presumption can be drawn against accused persons u/S 113-B of Evidence Act: *State of M.P. Vs. Mukesh Kewat, I.L.R. (2019) M.P. 489 (DB)*

6. Quashment

– Section 304-B & 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Ingredients of Offence – Quashment of prosecution – Wife died by hanging herself within three years of marriage – Offence registered against husband, mother-in-law and sister-in-law u/S 304-B and 498-A IPC – Sister-in-law filed this petition for quashment of proceedings against her – Held – Petitioner since her marriage in the year 2009 (before marriage of deceased) was living separately and was either resided at Agra or at Shirdi which is far away from Gwalior – So far as FIR and statements of relatives of deceased are concerned, it contains omnibus allegations against petitioner of subjecting the deceased to harassment and cruelty for dowry demands – Allegations in FIR does not contain the nature of allegations, the time and date of occurrence of any incident of cruelty or the kind of cruelty committed soon before the death of deceased – For the offence of dowry death u/S 304-B IPC, such vague, non-specific allegations do not satisfy the pre-requisite of the offence and fall short of basic ingredients – Prosecution of petitioner clearly appears to be malicious – Prosecution of petitioner u/S 304-B IPC is quashed and for the remainder charge, trial shall continue – Petition partly allowed: *Megha Singh Sindhe (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 1017*

7. Related/Interested Witness

– Section 304-B & 498-A – Criminal Practice – Interested & Related Witnesses – Held – In Indian society, in normal circumstances, demand for dowry or harassment for same takes place within the boundaries of house – Statement of family members of deceased lady cannot be discarded on the ground that they are relatives and are interested witnesses – In present case, evidence of family members are recorded after a considerable long time from date of incident, thus minor variations are immaterial if deposition are examined in entirety: *Surendra Singh Vs. State of M.P., I.L.R. (2018) M.P. 2263*

8. Relative of Husband

– Section 304-B & 498-A, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 and Dowry Prohibition Act, (28 of 1961), Section 3 & 4 – Revision Against Charge – Held – Applicant, brother-in-law (devar) of deceased staying in different State, pursuing his education and profession and was away from deceased, his brother and his parents – His participation in the alleged offence seems extremely improbable – Applicant was roped in to wreck vengeance on entire family – Even otherwise, allegations against applicant are so generalized, omnibus and flippant which do not constitute prima facie case against him – Applicant discharged – Revision allowed: *Utkarsh Saxena Vs. State of M.P., I.L.R. (2019) M.P. 653*

9. Miscellaneous

– Section 304-B & 306 – See – Criminal Procedure Code, 1973, Section 211: *Prashat Goyal Vs. State of M.P., I.L.R. (2016) M.P. 2812*

– Section 304-B & 498-A – See – Criminal Procedure Code, 1973, Section 378(3): *State of M.P. Vs. Mukesh Kewat, I.L.R. (2019) M.P. 489 (DB)*

– Section 304-B, 498-A – See – Criminal Procedure Code, 1973, Section 378(3) & 372: *Vinod Kumar Sen Vs. Smt. Shanti Devi, I.L.R. (2017) M.P. *85 (DB)*

– Section 304-B & 498-A – See – Evidence Act 1872, Section 3: *Rajesh Kumar Vs. State of M.P., I.L.R. (2018) M.P. 535 (DB)*

– Sections 304-B & 498-A r/w 34 – See – Criminal Procedure Code, 1973, Section 311: *Ashish Vs. State of M.P., I.L.R. (2017) M.P. *17*

– Section 304-B/34 & 498-A – See – Criminal Procedure Code, 1973, Section 438: *Neeraj @ Vikky Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1796*

• **– Section 304 Part II** – Murder – Conviction – Quantum of Sentence – Held – Mother killing her own son aged about 3 yrs. by administering Aluminum Phosphide – Child of 3 yrs. feel safe with her mother but act of appellant was just opposite to such expectation – Nobody has seen God but we all treated the mother as God – No leniency required – Appropriate punishment should be given as she destroyed the pious image of mother – No ground to reduce the sentence – Appeal dismissed: *Bittan Bai Paul Vs. State of M.P., I.L.R. (2018) M.P. *80*

– Section 304 Part II – Quantum of Sentence – Trial Court convicted appellant u/S 304 Part II IPC and sentenced 3 years RI for assaulting and killing his own father – High Court in appeal confirmed the conviction but modified the sentence to period already undergone i.e. 3 months and 21 days – Held – In such a case, there

was no further scope for leniency on question of punishment that what had already been shown by trial Court – High Court was not justified in reducing sentence to an abysmally inadequate period of less than 4 months – Impugned judgment of High Court is set aside and that of trial Court is restored: *State of M.P. Vs. Suresh, I.L.R. (2019) M.P. 1348 (SC)*

– Section 304 Part II & 304-A – Ingredients – Death by Negligence – Intention – Applicants charged for offence u/S 304 Part II IPC – Child aged 7 years died by drowning in swimming pool where applicants were instructors/coaches – Held – No mens rea or intention or knowledge on part of applicants – Applicants were mere negligent in performing their duty which is covered u/S 304-A and not u/S 304 Part II IPC – Impugned order set aside – Trial Court directed to proceed trial u/S 304-A/34 IPC – Revision allowed: *Vishal Vs. State of M.P., I.L.R. (2018) M.P. *70*

SYNOPSIS : Section 306

1. Appreciation of Evidence

– Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Primary Evidence – Considerations – Held – FIR registered on basis of documents and statements of 10 witnesses which prima facie shows that deceased was being continuously pressurized by applicants to bring money from her parents, for which she was also beaten – Minute marshalling of evidence recorded u/S 161 and of prosecution documents cannot be done at primary stage – Sufficient material to proceed against applicants – Application dismissed: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 306/34 & 107 – Revision against Charge – Ingredients – Deceased husband used to object the relationship of his wife with the applicant/accused whereby wife not only use to quarrel with the deceased but also used to threaten him in front of applicant/accused of falsely implicating him in criminal case – Held – It is clear that applicant and co-accused had created such a situation which indicate something more than mere relationship – There is sufficient material available on record to

draw an inference that applicant with co-accused (wife of deceased) by their conduct has instigated the deceased to commit suicide – Charge rightly framed – Revision dismissed: *Ashok Vs. State of M.P., I.L.R. (2017) M.P. *114*

– Sections 306, 344, 363, 375, 376 & 506(2) – Kidnapping & Rape – Conviction – Consent – Offence Registered against Women – Prosecutrix aged 17 years was kidnapped and raped by inducing her for marriage – A lady was also convicted – School marksheet shows that prosecutrix was aged below 18 years on the date of incident – Doctor also found her age between 17 – 18 years – As per Section 375 IPC, in such a case, if sexual intercourse is committed even with her consent, the same would amount to rape – Further held – Apex Court concluded that a woman cannot be prosecuted for gang rape even if she facilitates the commission of rape – Conviction of appellant lady is set aside – Conviction of rest of accused upheld – Appeals partly allowed: *Babloo @ Ramesh Vs. State of M.P., I.L.R. (2018) M.P. *49*

– Section 306 & 498-A – Separate Living of Accused – Effect – Held – Only upon the basis of separate living of any accused it cannot be believed that he could not participate in crime like u/S 498-A and 306 IPC related to women: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

2. Dying Declaration

– Section 306, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Discharge – Grounds – Held – Several complaints filed by deceased against respondent, last of them was filed a few days before suicide – Specific dying declaration by deceased regarding harassment by respondent – Sufficient material on record to uphold framing of charge by Trial Court – High Court erred in discharging the respondent – Impugned order set aside: *State of M.P. Vs. Deepak, I.L.R. (2019) M.P. 1624 (SC)*

3. Framing of Charge

– Sections 306 & 498-A and Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 401 – Revision against framing of charge u/S 306 and 498-A of the IPC on the ground that deceased has consumed poison on a minor incident of not being allowed to go alongwith her brother – Ingredients of Section 107 of IPC are not satisfied – Therefore, offence is not made out – Held – There are at least 3 witnesses who have alleged that the deceased was beaten by the applicants – Whether the said allegations are true or false or whether not allowing the deceased to go with her brother was the last straw that broke the camel's back or whether the deceased was

hypersensitive, can only be deduced in trial – There is no illegality or perversity in the impugned order – Application is dismissed: *Ramswaroop Vs. State of M.P., I.L.R. (2016) M.P. 2568*

– Section 306 – See – Criminal Procedure Code, 1973, Sections 227 & 228: *Rajesh Singh Vs. State of M.P., I.L.R. (2016) M.P. 2351*

4. Independent Evidence

– Section 306 & 498-A – Independent Witnesses – Effect – Held – Prosecution case cannot be thrown merely because independent witnesses are not available to support prosecution – Nowadays, independent witnesses are showing their indifferent attitude towards offence and they try to stay away as neither they are interested in taking any pains for deposing before Court nor they want to spoil their relationship with accused persons – In present case, merely because neighbours were not examined by prosecution to prove harassment or cruelty, it would not ipso facto mean the evidences of witnesses are not worth reliance: *Liyakatuddin Vs. State of M.P., I.L.R. (2018) M.P. 2927*

5. Ingriedients of Offence

– Section 306 – Abetment of Suicide – To constitute offence u/S 306, the prosecution has to establish that – (i) A person has committed suicide – (ii) That such suicide was abetted by the accused – In other words, the offence u/S 306 would stand only if there is abetment for commission of crime: *Rajesh Singh Vs. State of M.P., I.L.R. (2016) M.P. 2351*

– Section 306 – Abetment to Suicide – Ingredients & Scope – Discussed and explained: *Dipti Rathore Vs. State of M.P., I.L.R. (2019) M.P. *66*

– Section 306 – Ingredients – Held – Facts and circumstances do not suggest mental preparedness of applicants with intention to instigate, provoke, incite or encourage to commit suicide – Suicide note left by deceased also does not implicates the applicants at all: *Manorama Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 674*

– Section 306 & 107 – Abetment to Suicide – Held – a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect, to do an act – In the present case, deceased was in habit of gambling – Inspite of repeated requests by the father of the deceased, applicant continued to lend money to deceased at high rate of interest – Accused use to compel the deceased to repay the amount or give his property – Father of deceased sold some land to return the money but even after that, accused continued to lend

money to the deceased so that deceased may gamble more – Accused got an agreement to sell executed from the deceased – Accused tried to take possession of the house – Further held, it is not a case of simple lending and demanding money – Sufficient evidence available on record to frame charge u/s 306 IPC – While framing of charges, meticulous appreciation of evidence is not required, even a strong suspicion is sufficient – Revision dismissed: *Pammy alias Parmal Vs. State of M.P., I.L.R. (2018) M.P. *9*

– Sections 306 & 107 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Framing of charge – Section 306 – Involvement of person in abetting the commission of offence of suicide in all the three situations u/S 107 of IPC – Mandatory: *Hari Mohan Bijpuriya Vs. State of M.P., I.L.R. (2016) M.P. 2340*

– Section 306 & 498-A – Cruelty & Abetment to Suicide – Circumstances & Grounds – Deceased committed suicide by setting herself on fire – Held – It is established by evidence that deceased was maltreated, harassed and beaten by appellant/husband – Deceased had a view that now there is no possibility of any improvement in behaviour of appellant and a situation has been created where deceased had lost all hopes of happy married life and got an impression that she has no option but to put an end to her life – Appellant committed an offence of abetment of suicide – Conviction u/S 306 & 498-A IPC upheld – Appeal dismissed: *Liyakatuddin Vs. State of M.P., I.L.R. (2018) M.P. 2927*

6. Instigation not Established

– Section 306 – Abetment of suicide – Applicant took the jewellery of the deceased and did not return it even after asking, thereafter, deceased committed suicide – Held – In the available facts and circumstances of the case, it is very much clear that no instigation has been caused by the applicant, so it will not amount to abetment within the purview of Section 107 of IPC – No offence under Section 306 of IPC made out – Order framing charge under Section 306 of IPC is hereby quashed – Applicant discharged – Revision allowed: *Gajendra Singh Vs. State of M.P., I.L.R. (2016) M.P. 2073*

– Section 306 – Abetment of suicide – None of the accused provoked, incited or goaded the deceased or even encouraged him to commit suicide – They merely demanded money which the deceased allegedly taken on loan – They never intended that the deceased should commit suicide – There is absolutely no material on record to indicate that the present applicant instigated the deceased to commit suicide – In absence of such essential ingredients of abetment, no charge for the offence u/s 306 of IPC is made out: *Kunchit Thakur Vs. State of M.P., I.L.R. (2016) M.P. 1576*

– Section 306 & 107 – Abetment – Appreciation of Evidence – Held – No witnesses admitted the fact of illicit relationship of accused with another girl – Extra-

marital relationship not proved by prosecution witnesses – Only up on surmises and conjectures, trial Court convicted appellant on the basis of suggestions given by defence counsel during cross-examination related to suspicion of extra-marital relationship – Such suspicion not sufficient to draw presumption of abetment to suicide – Conviction set aside – Appeal allowed: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

7. Opportunity to Accused

– Section 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Questions/Opportunity to Accused – Held – When court convicts the accused on basis of any evidence, such evidence should be put up before the accused u/S 313 Cr.P.C. to give him opportunity to explain the circumstances – No such question was framed by the trial Court: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

8. Quashment

– Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Quashment of FIR – Held – No allegations against applicants in dying declaration and in statement of victim recorded u/S 161 Cr.P.C. – Dying declaration prima facie seems to be suspicious – When doubt is created upon any statement or document, it may be resolved or justified only by elaborate statement before Trial Court – Such document/statement cannot be made basis for quashment of FIR – Application dismissed: *Digvijay Singh Vs. State of M.P., I.L.R. (2020) M.P. 979*

– Section 306 & 107 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Abetment to Suicide – Quashment of FIR – Allegation of abetment to suicide against daughter-in-law of deceased – Held – Extra marital relationship of daughter-in-law, her abnormal behavior or threat given by her to deceased to implicate in false cases, are not sufficient to constitute offence u/S 306 – Her behaviour may be a cause behind suicide but abetment by applicant cannot be presumed – Deceased was hyper sensitive, thus committed suicide – FIR quashed – Application allowed: *Dipti Rathore Vs. State of M.P., I.L.R. (2019) M.P. *66*

– Section 306 & 107 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Abetment to Suicide – Quashment of Proceeding – Deceased, who was a section officer worked under the supervision of Manager/Applicant, committed suicide – In the suicide note and email, he blamed applicant responsible for it – Offence registered against the applicant – Challenge to – Held – To constitute the commission of offence u/S 306, an element of mens rea is an essential ingredient as the abetment involves a mental preparedness with an intention to instigate, provoke insight or encourage to do an act or a thing – Such process of instigation must have close proximity with the act of commission of suicide – In the instant case, in the emails

dated 25.05.97 and 11.09.97, deceased had not made allegation of harassment, cruelty or incitement tantamounting to provocation by the applicant to take the extreme step of committing suicide – In the challan also, there is no material to suggest or attributable positive act on the part of applicant that he had an intention to push the deceased to commit suicide – Magistrate has not applied his mind and passed cognizance order in a mechanical manner – Proceeding against applicant is quashed – Application allowed: *Abhay Kumar Katare Vs. State of M.P., I.L.R. (2018) M.P. 1026*

– Section 306 – See – Criminal Procedure Code, 1973, Section 482: *Harnam Singh Vs. State of M.P., I.L.R. (2016) M.P. 2874*

– Section 306 & 498-A – See – Criminal Procedure Code, 1973, Section 482: *Mahendra Singh Vs. State of M.P., I.L.R. (2017) M.P. *80*

9. Specific Charge

– Section 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Framing of Charge – Held – Trial Court framed charge u/S 306 IPC but no indications of extra-marital relationship has been mentioned in the charge – Accused cannot be convicted for aforesaid offence in absence of specific charge: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

10. Suicide Note

– Section 306 & 107 – Conviction – Abetment to Suicide – Suicide Note – Credibility – As per prosecution story, husband went to Gadarwara to attend a case filed against him by his wife, where in Court premises, he was beaten by the accused persons and because of such harassment he committed suicide by lying down before a train – Suicide note found – Held – Although suicide note was in handwriting of deceased and the death was not accidental but suicidal but suicide note do not have any mention of beating given to deceased by accused persons just prior to committing of suicide rather all complaints mentioned in the note against appellants were quite old and stale – Witnesses who accompanied deceased did not support the prosecution case – There is a distinction between cause of suicide and abetment of suicide – As per record, appellants did not instigated the deceased to commit suicide – Conviction set aside – Appeal allowed: *Shuklaa Prasad Shivhare Vs. State of M.P., I.L.R. (2018) M.P. 1986*

– Section 306 & 107 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Abetment of suicide – Suicide note – Accused took huge loan from deceased and not repaying on demand – Causing problems – Deceased feeling ashamed in market because of them – Accused responsible to instigate or to goad or urge forward – Act was such that the deceased not in position to face market and feel ashamed –

Situation created to take extreme action: *Hari Mohan Bijpuriya Vs. State of M.P., I.L.R. (2016) M.P. 2340*

11. Miscellaneous

– Section 306 – See – Criminal Procedure Code, 1973, Sections 397 and 401: *Dinesh Vs. State of M.P., I.L.R. (2017) M.P. 162*

– Section 306 – See – Criminal Procedure Code, 1973, Sections 397 & 401: *Ramnaresh Vs. State of M.P., I.L.R. (2016) M.P. 3127*

– Section 306/34 – See – Criminal Procedure Code, 1973, Section 438: *Puspa Bai Vs. State of M.P., I.L.R. (2019) M.P. 1311*

– Section 306 & 498-A – See – Criminal Procedure Code, 1973, Section 82 & 438: *Rajni Puruswani Vs. State of M.P., I.L.R. (2020) M.P. 1477*

SYNOPSIS : Section 307

1. Appreciation of Evidence

– Section 307 and Arms Act (54 of 1959), Section 25(1) & 27 – Appreciation of Evidence – Held – Testimony of complainant/ victim duly corroborated by medical evidence – No material omission and contradiction in testimonies of prosecution witnesses – Armourer report also corroborated the prosecution case – Appellant rightly convicted u/S 307 IPC – Appeal dismissed: *Kishori Vs. State of M.P., I.L.R. (2019) M.P. 1757*

– Section 307 r/w Section 34 – Appreciation of Evidence – Conviction and Sentence – Appellant and four others were accused – Two bombs were thrown on complainant whereby complainant suffered simple injuries – High Court confirmed the conviction and sentence – Challenge to – Held – Present appellant specifically shouted "kill him, he should not be spared, he habitually reports" – It is not essential that bodily injury capable of causing death should have been inflicted in order to make out a charge u/S 307 IPC – It is enough, if there is an intention coupled with some common act in execution thereof – In the instant case, nature of weapon used predominates as two bombs were hurled, which are lethal weapons by which it can be

inferred that intention was to cause death – Further held – It is true that injuries were simple but this is only because of fortuitous circumstances that bombs exploded at a distance far from the injured/complainant – Accused/ appellant coming alongwith four other persons, committed the offence and going back together with them and appellant shouting the words "kill him" certainly attract the charge u/S 307 r/w Section 34 IPC – Intention was to kill the complainant as he was an informer – Crime committed is heinous in nature and it appears that appellant has got away lightly – No interference required – Appeal dismissed: *Chhanga @ Manoj Vs. State of M.P., I.L.R. (2017) M.P. 1795 (SC)*

2. Common Intention

– Section 307 r/w 34 – Appreciation of Evidence – Common Intention – Held – Prosecution failed to establish any common, premeditated or prearranged intention jointly of appellant and main accused to kill the complainant, on the spot or otherwise – Appellant neither carried arms nor opened fire – It is also not proved that pistol was fired by main accused at exhortation of appellant – Conviction set aside – Appeal allowed: *Chhota Ahirwar Vs. State of M.P., I.L.R. (2020) M.P. 1050 (SC)*

3. Motive & Intention

– Section 307 – Ingredients – Motive & Intention – Held – If assailant acts with intention or knowledge that such action might cause death and hurt is caused, then provisions of section 307 would be applicable – No requirement for injury to be on a "vital part" of body, merely causing "hurt" is sufficient to attract Section 307 IPC – In present case, multiple blows inflicted by R-1 proves his intention – Motive was also established – Ingredients of Section 307 made out – Prosecution successfully proved that R-1 attempted to murder complainant: *State of M.P. Vs. Harjeet Singh, I.L.R. (2019) M.P. 1337 (SC)*

– Section 307 – Intention – Nature of Injury – Revision against framing of charge u/S 307 IPC – Held – The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury – Merely if victim has suffered a minor injury would not entitle the assailant to get the benefit of the same – Intention to cause a particular injury cannot always be gathered from the nature of injury caused especially when the injury is caused on the vital parts of the body – Record reveal that victim suffered a fracture of Clavicle and also a head injury as skull was found to be fractured – Sufficient evidence to proceed against the petitioner – No illegality in framing the charge – Revision dismissed: *Hari Kishan Vs. State of M.P., I.L.R. (2018) M.P. *7*

– Section 307 – Nature of Injury – Intention – Held – Apex Court concluded that Court has to see whether the act, irrespective of its result, was done with intention

and knowledge, and such act under ordinary circumstances could cause death of person assaulted – Further, it does not require that hurt should be grievous or of any particular degree – For conviction u/S 307 IPC, intention of accused is to be considered and not the nature of injury: *Kishori Vs. State of M.P., I.L.R. (2019) M.P. 1757*

– Section 307 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of Charge – Nature of Injury – Held – Site of human body on which injury is caused by assailant would more precisely disclose his intention whether same be of causing death of victim or merely to cause bodily pain or hurt – Nature of injury by itself will not be reliable and safe indicia for prima facie assessment of an intention – Victim was assaulted on vital part of body (head) – Charge rightly framed u/S 307 IPC – Appeal dismissed: *Surendra Vs. State of M.P., I.L.R. (2019) M.P. *46*

– Section 307 & 324 – Nature of Injuries & Weapon of Offence – Intention – Conviction of respondent u/S 307 was converted by High Court to one u/S 324 IPC – Held – 11 punctured and bleeding wounds as well as use of fire arm leave no doubt that there was an intention to murder – Multiplicity of wounds indicates that respondent fired at injured more than once – Lack of forensic evidence to prove grievous or life-threatening injury cannot be a basis to hold that Section 307 IPC is inapplicable – Second part of Section 307 IPC attracted – Impugned order set aside – Judgment of Trial Court restored: *State of M.P. Vs. Kanha @ Omprakash, I.L.R. (2019) M.P. 967 (SC)*

4. Previous Enmity

– Section 307 r/w 34 – Appreciation of Evidence – Previous Enmity – Held – In respect of previous enmity and pre-existing family disputes between appellant and complainant, there are notable discrepancies between evidence of complainant and prosecution witness, raising serious doubt about the same – Previous enmity not established: *Chhota Ahirwar Vs. State of M.P., I.L.R. (2020) M.P. 1050 (SC)*

5. Quashment

– Sections 307, 294 & 323/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 397 r/w Section 401 – Quashing of charges – Allegations – Petitioner inflicted 'Danda' blow on the abdomen area of prosecutrix and at that time she was pregnant – Co-accused persons had attacked with knife and 'Danda' – MLC report – No external injury found – No USG report on record relating to internal injury or of miscarriage – No opinion of doctor on record – Held – As no external or internal injury was found on the body of prosecutrix, it is very much clear that applicant neither intended to kill prosecutrix nor there was any injury on body of the prosecutrix, so case does not fall within the purview of Section 300 of IPC and no offence u/S 307

of IPC is made out – Revision allowed – Charge u/S 307 of IPC is quashed – Matter remanded back to Trial Court for framing of charges afresh: *Nawab Khan Vs. State of M.P., I.L.R. (2016) M.P. *11*

6. Reduction in Sentence

– Section 307 & 324 – Modification/ Reduction in Conviction & Sentence – Appreciation of Evidence – Respondents convicted u/S 307 IPC by Trial Court which was further reduced by High Court in appeal to one u/S 324 IPC – Held – R-1 inflicted four injuries to victim by using knife, causing injury in his lungs which resulted in blood seeping into lungs – Such injury cannot be said to be made on "unimportant part" of body – The act of stabbing a person with sharp knife near his vital organs would ordinarily lead to death of victim – High Court erred in reducing the conviction and sentence of R-1 – Order of Trial Court convicting R-1 u/S 307 is restored – Appeal partly allowed: *State of M.P. Vs. Harjeet Singh, I.L.R. (2019) M.P. 1337 (SC)*

7. Related Witness

– Section 307/34 – Conviction – Related Witness – Appreciation of Evidence – Injuries – Bull of appellant damaged the crops of complainant whereby objection was raised and panchayat was called – Subsequently complainant was assaulted by appellants with rod and sticks – Held – Doctor who examined complainant deposed that injuries were sufficient to cause death – Nature and number of injuries itself indicate that complainant was assaulted by more than one person as injuries were caused on different parts of his body – Common intention established – Complainant was admitted for 21 days in hospital for treatment – Further held – Complainant and PW-3 are husband and wife and are related witnesses and their evidence cannot be rejected on this ground alone – Evidence of complainant and his wife is corroborated by doctors and circumstances – Testimony reliable and do not require corroboration from other independent witness – Trial Court rightly convicted the appellants – Appeal dismissed: *Sangram Vs. State of M.P., I.L.R. (2017) M.P. 2243*

8. Miscellaneous

– Section 307/34 & 308 – See – Criminal Procedure Code, 1973, Section 320 & 482: *State of M.P. Vs. Laxmi Narayan, I.L.R. (2019) M.P. 1605 (SC)*

– Sections 307, 294 & 34 – See – Criminal Procedure Code, 1973, Section 320 & 482: *State of M.P. Vs. Dhruv Gurjar, I.L.R. (2020) M.P. 1 (SC)*

• **– Section 309** – Medical Evidence – Appreciation of Evidence – Held – Although one incised wound found on neck of appellant but there is no evidence on record that appellant tried to commit suicide by causing injury to himself by cutting

his neck – Appellant acquitted of charge u/S 309 IPC: *Pratap Vs. State of M.P., I.L.R. (2017) M.P. 2502 (DB)*

– Section 312 & 315 – Termination of Pregnancy – Discussed and explained: *Raisa Bi Vs. State of M.P., I.L.R. (2019) M.P. 1415*

– Sections 323/34, 341 & 506(2) – See – Criminal Procedure Code, 1973, Sections 2(d), 2(wa), 372, 378(4): *Meena Devi (Smt.) Vs. Omprakash, I.L.R. (2016) M.P. 1167*

– Sections 323, 294 & 352 and Criminal Procedure Code, 1973 (2 of 1974), Section 197 & 482 – Quashment of proceedings – Public Duty – Held – Petitioner facing trial on allegation of acts, which he did while performing public duties as public servant – Case is void ab initio because no permission/sanction taken from competent authority u/S 197 of the Code for putting petitioner into trial – Private complaint filed against petitioner after 6 months of alleged incident and is guided by counter blast and malice – Proceedings quashed – Application allowed: *Ramanand Pachori Vs. Dileep @ Vakil Shivhare, I.L.R. (2020) M.P. 249*

– Sections 323, 325, 326, 341, 294, 352, 354 & 506 (Part II) – See – Criminal Procedure Code, 1973, Sections 200 & 482: *A.K. Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2841*

– Sections 323, 355, 294, 190 & 506 – See – Criminal Procedure Code, 1973, Section 482: *Sushant Purohit Vs. State of M.P., I.L.R. (2019) M.P. 944*

– Section 324 – Causing hurt by dangerous weapons or means – Applicant clawed the neck of complainant with his nails – Whether human nails are dangerous weapon – There is difference between teeth and nails – Teeth are capable of chopping away parts of human body whereas nails are weaker than a tooth – They are not capable of exerting same amount of pressure as teeth – Human nail cannot be placed on same footing as tooth – Hurt caused by human nail may not qualify injury caused by means of an instrument – Charge framed u/s 324 or 324/34 not sustainable and thus quashed – Trial Court directed to proceed in respect of other offences: *Chhota @ Akash Vs. State of M.P., I.L.R. (2016) M.P. 1245*

– Section 324 – See – Criminal Procedure Code, 1973, Section 228: *Rishin Paul Vs. State of M.P., I.L.R. (2016) M.P. 1514*

– Section 324 and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Compromise – Application u/S 320 (2) (5) & (8) of Cr.P.C. for compounding of offence u/S 324 of I.P.C. – Offence u/S 324 of I.P.C. is now non-compoundable as per the Code of Criminal Procedure (Amendment) Act, 2009 w.e.f. 31.12.2009 – Incident has taken place prior to 31.12.2009 – Held – Offence u/S 324 of I.P.C. was

compoundable prior to 31.12.2009 as per the provisions enshrined u/S 320 (2) & 320 (5) of Cr.P.C. – Applicant is acquitted from the offence u/S 324 of I.P.C. – Revision stands disposed off: *Suraj Dhanak Vs. State of M.P., I.L.R. (2016) M.P. 3140*

– Section 324/34 – Co-accused is alleged to have caused injury by means of iron rod – If iron rod is considered as dangerous weapon then an offence under Section 326 would be made out and if not then under Section 325 of I.P.C. would be made out as the complainant has suffered corresponding bony injury: *Rishin Paul Vs. State of M.P., I.L.R. (2016) M.P. 1514*

– Section 325 – Appellant convicted u/s 325 of IPC and was sentenced to undergo 7 years rigorous imprisonment with fine of Rs. 2,000/- – He himself has admitted that he has caused two injuries with lathi on the head of injured resulting fracture of the frontal bone – Hence notice was issued only limited to the quantum of sentence – Held – Since there is a fracture of frontal bone which brings offence within the definition of grevious hurt as defined u/s 320 of the IPC – High Court has rightly convicted the appellant u/s 325 of IPC – Considering the overall circumstances, as the incident was a result of sudden fight and in a fit of passion, 7 years sentence is excessive – Same is reduced to 3 years – Appeal is partly allowed: *Sakharam Vs. State of M.P., I.L.R. (2016) M.P. 1 (SC)*

– Section 325 or 326 – Fracture of Nasal bone by 'Lathi' – Whether 'Lathi' (wooden stick) used in causing fracture of nasal bone can be termed as a "weapon or instrument likely to cause death" within the purview of Section 324 of IPC – Held – 'Lathi' (wooden stick) cannot be said in the present context as an instrument likely to cause death or a dangerous weapon, so grievous hurt caused by a hard and blunt weapon like 'Lathi' will fall within the purview of Section 325 of IPC and not u/S 326 – Charge u/S 326 of IPC set aside – Prima facie offence u/S 325 of IPC is made out – Revision allowed: *Manik Rao Yavle Vs. State of M.P., I.L.R. (2017) M.P. *36*

– Sections 325, 326/34 & 506 Part II – Revision Against Charge – Deadly Weapon – Co-accused had bitten the thumb of complainant lady causing fracture, when she came to rescue her husband while husband was being beaten by applicants – Held – Supreme Court concluded that teeth of human being cannot be considered as deadly weapon as per Section 326 IPC – It can best remain only at Section 325 IPC – Further, it cannot be said that co-accused caused injury to victim in furtherance of common intention – Charge u/S 326 & 326/34 IPC against co-accused not made out and is quashed – Charge u/S 325 be framed against applicants – Case remanded back to lower Court: *Ram Niranjan Vs. State of M.P., I.L.R. (2018) M.P. *85*

– Section 326 – Conviction – Nature of Injury – Appellant no. 2, Shivcharan convicted u/S 326 IPC – Held – Shivcharan inflicted a blow to cousin of deceased

with sharp side of axe resulting in incised wound and fracture of left elbow joint – He cause grievous injury to victim with a sharp cutting object – Shivcharan rightly convicted u/S 326 IPC – His appeal against conviction dismissed: *Shrichand Vs. State of M.P., I.L.R. (2017) M.P. 2231 (DB)*

– Section 326, Criminal Procedure Code, 1973 (2 of 1974), Section 378 (3) – Acquittal Converted to Conviction – Held – Supreme Court has concluded that if order of acquittal has been made on improper and erroneous appreciation of evidence, the same can be set aside by Appellate Court: *State of M.P. Vs. Keshovrao, I.L.R. (2017) M.P. 2480 (DB)*

– Section 326 r/w 34 & 452 – Sentence and Fine – High Court reduced the sentence to period already undergone (4 days) – Held – Aspect of sentencing should not be taken for granted as this part of criminal justice system has determinative impact on society – In present case, intrusion of privacy due to assault is minimal, there is no material destruction involved in crime and motive was also trivial in nature – It was the first offence by accused – Sentence reduced and fine amount enhanced – Appeal partly allowed: *State of M.P. Vs. Udham, I.L.R. (2020) M.P. 309 (SC)*

– Section 326 & 324 – Acquittal – Appreciation of Evidence – Testimony of Eye Witnesses – Minor Contradictions – Held – Although prosecution failed to prove that complainant sustained grievous injury but there are sufficient direct evidence of complainant and eye witnesses available against accused which were duly corroborated by medical evidence that simple injuries were voluntarily caused by accused using sharp cutting object – No material contradiction between ocular and medical evidence – Thus offence u/S 326 IPC not made out but offence u/S 324 is made out and proved beyond reasonable doubt – Finding of acquittal is hereby set aside – Accused guilty of and is convicted for offence u/S 324 IPC: *State of M.P. Vs. Keshovrao, I.L.R. (2017) M.P. 2480 (DB)*

– Section 327/34 & 323/34 and Limitation Act (36 of 1963), Section 5 – Appeal – Condonation of Delay – Held – Delay of 5 yrs. and five months in filing appeal against conviction – In absence of sufficient cause for such default, specifically when applicant was not in jail, Trial Court rightly dismissed the application for condonation of delay – But, as co-accused has been acquitted by Appellate Court by raising doubt on the very basic allegation made against accused persons including present applicant, Court should have allowed the application u/S 5 of the Act of 1963 on this ground – Delay condoned – Matter remanded back for consideration on merits: *Aatamdas Vs. State of M.P., I.L.R. (2019) M.P. *1*

– Section 328 & 379 – Conviction – Intoxication and Theft in Train – Appreciation of Evidence – Test Identification Parade – Effect – Neither test

identification parade was conducted by police nor face to face identification was done before Court – Held – Complainant identified the photo pasted upon the arrest memo and confirmed that he was the one who committed the offence – He could identify/recognize the accused as he spent sufficient time with him in train – Evidence of complainant reliable – No defence witness examined – Non holding of Test Identification parade is not fatal to prosecution – Appeal dismissed: *Bharat @ Sooraj Jain Vs. State of M.P., I.L.R. (2018) M.P. *79*

– Sections 336, 337, 338, 308 & 384 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – Prima facie material about negligence on part of petitioner is available in final report but no material or any opinion of expert doctor against petitioner that the injury was sufficient in ordinary course of nature, to cause death – If death cannot be caused by such injury, petitioner cannot be prosecuted u/S 308 IPC – Physical hurt is not a necessary prerequisite for invoking the provision of Section 308 IPC – Quashment of entire FIR not warranted at this stage – FIR u/S 308 IPC is quashed – Application partly allowed: *Arif Ahmad Ansari (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 972*

– Sections 337, 279 & 304-A, Criminal Procedure Code, 1973 (2 of 1974), Sections 300 & 482 and Constitution – Article 20(2) – Double jeopardy – Earlier petitioner was tried and convicted for the offence punishable under Section 337 and 279 of the IPC – Subsequently tried for offence under Section 304-A of the IPC – If a person has been tried and convicted for less graver offence arising out of one particular incidence, then he can very well to be tried for a graver offence which may also arise out of the same incidence – Constitutional protection under Article 20(2) is against the offence and not against the act/incidence – Section 304A IPC gets attracted when, the death takes place due to rash and negligence act, whereas when mere hurt takes place, Section 337 of IPC can be invoked – Whereas Section 279 of IPC gets attracted merely by driving a vehicle on public way in a rash and negligent manner which endangers human life, which may or may not cause an injury to anyone – The applicant can very well be prosecuted for a graver offence despite having been earlier prosecuted and punished for a lesser offence – Application dismissed: *Nadimuddin Vs. State of M.P., I.L.R. (2016) M.P. 316*

– Sections 341, 354(D)(1)(i), 506-II & 509, Protection of Children from Sexual Offences Act (32 of 2012), Section 11(1)/12 & 11(4)/12 and Criminal Procedure Code, 1973 (2 of 1974), Section 372 – Appeal Against Acquittal – Appreciation of Evidence – Contradictions and Omissions – Previous Enmity – Held – Minor/immaterial contradictions and omissions cannot be made a ground for acquittal – Criminal background of father cannot come in way of seeking justice by victim – Defence failed to prove any previous enmity/land dispute – Accused not only guilty of wrongly

restraining victim, threatening her to face dire consequences of life and sexual harassment but also guilty of stalking – Prosecution proved its case beyond reasonable doubt – Acquittal set aside – Conviction & sentence awarded – Appeal allowed: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Section 341 & 384 – See – Criminal Procedure Code, 1973, Section 482: *Bhupendra Singh Yadav Vs. State of M.P., I.L.R. (2017) M.P. 1788*

– Section 354 – Conviction – Testimony of Prosecutrix – Held – In such type of cases, sole testimony of prosecutrix can be relied on because accused would have committed the offence in lonely place when he found the prosecutrix alone, therefore it is not expected that in every case, independent witnesses will be available – In the instant case, testimony of prosecutrix was cogent and consistent – No previous enmity proved – No ground for interference – Applicant rightly convicted – Revision dismissed: *Shiv Kumar Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1750*

– Section 354, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) and Criminal Procedure Code, 1973 (2 of 1974), Section 320(1) & (2) – Conviction – Compounding of Offence – Held – In this appeal, an application u/S 320(1) Cr.P.C. for compounding the offence was jointly filed by the complainant and appellant which was allowed by this Court – Offence u/S 354 IPC is compoundable u/S 302(2) Cr.P.C. for the relevant time – Further held – Evidence of prosecutrix shows that she was going to forest when appellant stopped and forcibly caught hold of her and dragged her to the bushes and pressed her breast and outraged her modesty – Contents of FIR and testimony of prosecutrix shows that offence was not committed on account of caste – Offence u/S 354 IPC has already been compounded – No case under the provision of the Act of 1989 is made out – Appellant acquitted of the charge – Appeal allowed: *Santosh Vs. State of M.P., I.L.R. (2018) M.P. *36*

– Sections 354 & 354-D – See – Criminal Procedure Code, 1973, Sections 482 & 320: *Sagar Namdeo Vs. State of M.P., I.L.R. (2016) M.P. 3415*

– Sections 354, 452 & 506 – See – Criminal Procedure Code, 1973, Section 482: *Somdatt Mishra Vs. State of M.P., I.L.R. (2019) M.P. 477*

– Section 354-A – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(w)(i): *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 361 & 363 – Kidnapping – Uncle of deceased entrusting the custody of deceased to the accused – Offence of kidnapping not made out – Conviction & sentence u/S 363 of IPC set aside – Appeal partly allowed: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Sections 361, 363 & 366 – Abduction – Prosecutrix was taken out from safe keeping of her parents – Appellant enticed her with proposal of marriage and cash of Rs. 1,00,000/- – Conviction and sentence u/S 363 and 366 of IPC confirmed: *Mahendra Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. 128*

– Sections 361, 363 & 366 – Determination of age of Prosecutrix – Ossification test – As not confined to examination of a single bone only, the margin of error could be ±six months – Age of prosecutrix found between 15-17 years – Prosecutrix stated her age to be 16 years on the date of incident – Trial Court rightly held prosecutrix age below 18 years: *Mahendra Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. 128*

– Section 362 – "Abduction" – Meaning – To constitute abduction there must be absence of will on part of the person abducted: *Goverdhan Vs. State of M.P., I.L.R. (2016) M.P. 3359*

SYNOPSIS : Section 363

1. Age of Prosecutrix

– Sections 363, 366 & 376 and Protection of Children from Sexual Offences Act (32 of 2012), Section 6 – Age of Prosecutrix – Consideration – Appreciation of Evidence – Held – When school record of prosecutrix is reliable, it is not necessary to look for any other evidence – School admission register and certificate issued thereof is duly proved – Further, ocular evidence of prosecutrix also corroborated with scientific/medical evidence – At the time of incident, prosecutrix was 15 years and 21 days old – Issue of consent do not require consideration – Appellant rightly convicted – Appeal dismissed: *Babalu @ Jagdish Vs. State of M.P., I.L.R. (2020) M.P. 183*

– Sections 363, 366, 376 & 506(2) – Rape – Medical Evidence – Appreciation of Evidence – Held – As per medical evidence, no injury on private parts and no definite opinion regarding rape – Prosecutrix was earlier engaged with appellant No. 1 – Previous enmity between appellant No. 1 and father of prosecutrix – It can be inferred by Ossification test report that prosecutrix was more than 16 yrs. of age – Prosecutrix never disclosed the incident to her relatives – It is very much

probable that prosecutrix was a consenting party – No cogent evidence against appellant No. 2 for abduction – False implication is probable – No offence of rape and abduction made out – Conviction and sentence set aside – Appeal allowed: *Bhagwan Vs. State of M.P., I.L.R. (2019) M.P. 184 (DB)*

– Sections 363, 366, 376(2)(I) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Held – Prosecutrix and her parents have not deposed the exact date of birth – Documentary evidence do not establish that age of prosecutrix was less than 18 yrs – No ossification test conducted – Date of birth recorded by mother in school record is based on presumption and is not reliable – No conclusive evidence regarding age of prosecutrix – Story told by prosecutrix is unnatural and doubtful – Delayed FIR – As per medical opinion, prosecutrix habitual to intercourse – No external or internal injury found on prosecutrix – Accused deserves benefit of doubt – Application dismissed: *Rabiya Bano Vs. Rashid Khan, I.L.R. (2017) M.P. 2579 (DB)*

2. Appreciation of Evidence

– Section 363 – Held – No evidence on record to establish that appellant took away the deceased from the lawful guardianship of the parents – In absence thereto, conviction u/S 363 set aside: *In Reference Vs. Shyam Singh @ Kallu Rajput, I.L.R. (2019) M.P. 1301 (DB)*

– Sections 363, 366 & 376(2)(i) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Medical & Chemical Examination – FSL Report – Held – As per medical report, Doctor has found no injury either on the person of prosecutrix or on her private parts and there was no sign of any intercourse – Doctor opined that no definite opinion of rape can be given – Vaginal swab and undergarment sent for chemical examination but prosecution failed to produce FSL Report – No corroboration with medical evidence – Further, Lady doctor who examined prosecutrix was not examined before Court – Adverse inference has to be drawn – Conviction set aside – Appeal allowed: *Shiva Salame Vs. State of M.P., I.L.R. (2019) M.P. *12*

– Sections 363, 366 & 376(1) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Offences under – Trial Court has considered the entire material evidence on record against non-applicants/accused in its entirety and on a proper appreciation of evidence and after assigning detailed and cogent reasons, has acquitted the non-applicants/accused – Evaluation of the evidence by the trial Court does not suffer from illegality, manifest error or perversity – No interference – Application for leave to appeal against acquittal of the accused/non-applicants dismissed in limine: *State of M.P. Vs. Ravi @ Ravindra, I.L.R. (2017) M.P. 221 (DB)*

3. Cancellation of Bail/Grounds

– Sections 363, 366-A & 376, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(w)(ii) & 14-A(2), Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) – Cancellation of Bail – Grounds – Repetition of offence after grant of Bail – Held – For repetition of offence, investigation is going on – Victim not living with her parents and living at One Stop Centre and her statements are not implicative – Accused trying to come out of his stigmatic past by complying other bail conditions and performing community service as reformatory measure, thus relegating him to jail would not serve the cause of justice – No case of cancellation of bail made out – Liberty granted to renew the prayer if any embarrassment/prejudice caused by accused in future – Application disposed: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

4. Consent

– Sections 363 & 366/34 – Kidnapping – Conviction challenged on the ground that girl was major and consenting party – Most of the witnesses turned hostile – Conviction is made on the omnibus statements and there are material contradictions – Held – Since at the time of incident prosecutrix was not major her consent does not amount to consent in the eyes of law – Nothing could be brought in the cross-examination of the witnesses – They are reliable and trust worthy – There is no perversity, infirmity in the judgment of the trial Court – Conviction is hereby affirmed – However, since the appellants have suffered jail sentence of 3 years and 10 months, jail sentence of the appellants is reduced to the period already under gone by them – Appeal is partly allowed: *Bato @ Veeru Vs. State of M.P., I.L.R. (2016) M.P. 2807*

5. Death Sentence

– Sections 363, 366A, 376(2)(f)(i), 376-A, 376-AB, 302 & 201 – Death Sentence – Held – It is a case of circumstantial evidence where principle of prudence applies – Age of accused (cousin brother of deceased) is 19 yrs., possibility of reformation and rehabilitation of his entire career cannot be ruled out – Prior and subsequent antecedents of accused in jail do not draw any negative inference – Considering the aggravating and mitigating circumstances, death sentence converted to life imprisonment of 30 yrs. – Appeal partly allowed and reference answered in negative: *Anand Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. 1470 (DB)*

6. Delayed FIR

– Sections 363, 366 & 376(2)(i) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Medical & Chemical Examination – Delayed FIR – Explanation – Held – After the incident prosecutrix remained in the night with her mother and father but did not disclose the incident – FIR lodged after more than 36 hours and delay was not properly explained by prosecution: *Shiva Salame Vs. State of M.P., I.L.R. (2019) M.P. *12*

7. Fair Opportunity of Defence

– Sections 363, 366 & 376-E, Protection of Children from Sexual Offences Act (32 of 2012), Section 5/6, Criminal Procedure Code, 1973 (2 of 1974), Sections 211 to 214 and Evidence Act (1 of 1872), Sections 3 & 118 – Confirmation of Death Sentence – Conviction u/s 363, 366 & 376-E IPC and 5/6 of 2012 Act awarding death sentence – Reference/appeal – Accused alleged to have abducted 8 years school going minor girl and subjected her to sexual intercourse against her will – Held – Accused was charged for a lesser offence u/s 376 (2)(i) of IPC and without alteration of charge he has been convicted u/s 376-E of IPC against the mandate of sub-section 7 of Section 211 of Cr.P.C. – He has been deprived of a fair opportunity of defence – Grave prejudice is caused to the accused – Criminal reference for confirmation of death sentence is rejected: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

– Sections 363, 366A, 376(2)(f)(i), 376-A, 376-AB, 302 & 201 – Circumstantial Evidence – DNA Test – Rape and murder of minor girl of 5 yrs. – Held – Testimony of prosecution witnesses, memo of recovery of articles at instance of accused have been established by prosecution – Doctor opined signs of recent forceful vagina-anal penetration prior to death of deceased minor girl – DNA found on vaginal-anal swab matched with blood sample of accused – Offence by appellant established by prosecution beyond reasonable doubt – Conviction affirmed: *Anand Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. 1470 (DB)*

8. Proportionate Sentence/Fine

– Sections 363 to 370 – Sentence in Default of Payment of Fine – Held – Imposition of fine of Rs.50,000 in default to undergo five yrs. R.I. separately is too harsh and excessive as per the overall social/financial condition of appellant – Trial Court must maintain proportion between offence and fine proposed and sentence awarded in default of non-payment of fine – Pecuniary circumstances of accused and character/ magnitude of offence is to be considered – Period of R.I. for five yrs. in default of payment of fine reduced to RI for one year – Appeal allowed to such extent: *Girijashankar Vs. State of M.P., I.L.R. (2018) M.P. 2946 (DB)*

9. Quashment

– Section 363 & 366 – Kidnapping/Abduction – Quashment of F.I.R. – It was alleged that applicant has abducted the prosecutrix from lawful custody of her parents – Prosecutrix more than 18 years of age – Statement of prosecutrix that she had voluntarily accompanied the applicant as she was in love with the applicant and got married – Living as husband & wife for last six months – Held – It is amply clear that prosecutrix had voluntarily accompanied the applicant and she was major at the time of incident and she had married the applicant, so at this stage no useful purpose will be served if prosecution is permitted to proceed further and is allowed to file the charge sheet – F.I.R. registered against the applicant quashed – Application u/S 482 of Cr.P.C. allowed: *Raj Kumar Choudhary Vs. State of M.P., I.L.R. (2017) M.P. *59*

10. Miscellaneous

– Sections 363, 376 (2)(n), 347, 368 & 354(2)/34 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12: *Vinay Tiwari Vs. State of M.P., I.L.R. (2018) M.P. 2047*

– Sections 363, 366 & 376/34 – See – Criminal Procedure Code, 1973, Section 164 & 439: *Manoj Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. *96*

– Sections 363, 366-A & 376(2) – See – Criminal Procedure Code, 1973, Section 389: *Mahesh Pahade Vs. State of M.P., I.L.R. (2018) M.P. *84 (DB)*

– Sections 363, 366-A & 376(2) – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 9 & 94(2): *Sharda Soni @ Sonu Soni Vs. State of M.P., I.L.R. (2018) M.P. 2507*

– Section 363 & 376(2)(n) – See – Criminal Procedure Code, 1973, Section 311: *Shyam @ Bagasram Vs. State of M.P., I.L.R. (2018) M.P. 1805*

• **– Section 364-A** – Conviction – Life Imprisonment – Appreciation of Evidence – Improper & Doubtful Investigation – Held – Case based on circumstantial evidence and test identification parade – Police never sought custody of appellants for interrogation for recovery of arms and ransom money – Witnesses of arrest memo and seizure memo never examined before trial Court – Seizure of weapon not proved beyond doubt – Another abductee, the best witness to recognize and identify abductors was not produced before Court – Out of 18 witnesses of charge sheet, only 6 were examined – Test Identification Parade of only one appellant conducted that too after 5 months of incident, though both accused were arrested just after one month of FIR – No explanation by prosecution – No reliable evidence to implicate appellants – Improper and doubtful investigation – Impugned judgment set aside – Compensation

granted to appellants – Appeal allowed: *Durga @ Raja Vs. State of M.P., I.L.R. (2018) M.P. 2469 (DB)*

– Section 364-A – Police Statement and Test Identification Parade – Credibility – Held – Victim in cross examination admitted that he did not know the appellants initially but he referred the name of appellants in police statements – Further, police has shown the appellant to victim therefore test identification parade at later stage in jail had no meaning and same is vitiated by mischief of police authorities – Such identification not established and cannot be relied: *Durga @ Raja Vs. State of M.P., I.L.R. (2018) M.P. 2469 (DB)*

– Section 364-A and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Conviction – Sole Testimony – Identification of Accused – Conviction based on sole testimony of abductee who identified the appellant before Court for first time – Name of appellant neither mentioned in FIR nor in the statement of abductee recorded u/S 161 Cr.P.C. – Seizure of Katta not proved – No identification parade conducted by Police – Apex Court held that identification before Court should not normally be relied upon if name of accused is neither mentioned in FIR nor before Police – If witness identifies the accused in Court for the first time, the probative value of such uncorroborated evidence becomes minimal – It is unsafe to rely on such piece of evidence – Appellant cannot be convicted on sole evidence of abductee – Appellant acquitted of the charge – Appeal allowed: *Ram Bhawan @ Lalloo Vs. State of M.P., I.L.R. (2018) M.P. 1726 (DB)*

– Section 366 – Ingredients – Held – Abduction alone cannot attract penal provisions of Section 366 IPC – If it is proved to be done with intention to compel prosecutrix to marry anyone or with intention to force or seduce for illicit intercourse, Section 366 IPC would be attracted: *Shiv Singh Vs. State of M.P., I.L.R. (2019) M.P. 1115*

– Section 366 – Intention – Appreciation of Evidence – Appellant No.1/ husband abducted his wife from the house of another person with whom she was maintaining live-in-relationship – Appellant abducted her with intent to bring her back to matrimonial home – No statement or testimony of prosecutrix u/S 161/164 Cr.P.C. recorded by prosecution – Abduction cannot be presumed to be committed with intent to seduce or compel prosecutrix to marry or be subjected to illicit intercourse – In absence of such intent, trial Court wrongly convicted the appellants – Appeal allowed: *Shiv Singh Vs. State of M.P., I.L.R. (2019) M.P. 1115*

– Section 366 & 376 – Abduction – Rape – Trial Court – Conviction & Sentence – Appeal against – Grounds – Prosecutrix travelled alongwith the appellant after alleged abduction from one place to another by walking, bus etc. and remained

out for 3 days – No injury mark on her body – Held – Inspite of many opportunities to resist, shout or run away during the course of long journey the prosecutrix choose to remain silent which creates doubt about her allegations and it points out that the prosecutrix was a willing party to the act and she herself has eloped with the appellant – Conviction & sentence set aside – Appellant acquitted – Appeal allowed: *Goverdhan Vs. State of M.P., I.L.R. (2016) M.P. 3359*

SYNOPSIS : Section 375 & 376

1. Abetment

– Section 376(2)(g) & 109 – Rape – Abetment – Appellant No. 2, a lady fecilitated her husband in crime of rape – Held – If specific charge u/S 109 IPC which is an independent offence, is not framed against accused, then she cannot be punished for the said offence – She cannot be held guilty for committing gang rape or abetment: *Chhotelal Vs. State of M.P., I.L.R. (2018) M.P. 1698*

2. Anticipatory Bail

– Sections 376(2)(N), 342, 506 & 190, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(W)(ii) & 3(2)(V) and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Ground – Allegation that appellant committed sexual intercourse in pretext of service and marriage and because of which she delivered a girl child – Held – As per the available records, prosecutrix is not a fair lady, she delivered a child in the year, when she was

in relation with other persons other than appellant – In another case, she admitted that the said girl child is from another person – Further held – Any act related to caste is not alleged in entire evidence – Prosecutrix lodged FIR against other persons also, in which they were acquitted by the Court – Anticipatory bail granted – Appeal allowed: *Ramkumar Vs. State of M.P., I.L.R. (2018) M.P. 2254*

– Sections 376, 386 & 506 – See – Criminal Procedure Code, 1973, Section 438: *Balveer Singh Bundela Vs. State of M.P., I.L.R. (2020) M.P. 1216*

3. Appreciation of Evidence

– Section 376 – Conviction – Life Imprisonment – Appreciation of Evidence – Testimony of Prosecutrix – Minor contradictions – Effect – Held – Rape committed by father on his minor daughter aged about 14 yrs. – Victim carrying fetus of 14-16 weeks – Prosecutrix giving evidence in detail regarding instances of rape does not amount to improvement with regard to FIR and case diary statements – Mere extracting out minor contradictions and inconsistencies in cross examination of the prosecutrix is not sufficient to discredit the veracity of her evidence – Trial Court rightly awarded life sentence – Appeal dismissed: *Ramnath Vs. State of M.P., I.L.R. (2017) M.P. 2706 (DB)*

– Section 376 – Prosecutrix turning Hostile – Effect – Held – Even if prosecutrix turns hostile, accused can be convicted on basis of scientific and other circumstantial evidence: *Arif Khan Vs. State of M.P., I.L.R. (2020) M.P. 1460*

– Section 376 – Rape – FSL Report – Significance – Held – FSL report is insignificant as FIR was lodged and prosecutrix was examined after nearabout 5 days of incident – Prosecutrix is a married lady and presence of semen and spermatozoa on her petticoat or vaginal swab can be found otherwise the incident – Further, no question was asked to appellant regarding FSL report during his examination u/S 313 Cr.P.C. – FSL report cannot be taken into consideration: *Badri Vs. State of M.P., I.L.R. (2019) M.P. 196*

– Section 376 – Rape – Minor Girl – Acquittal – Appreciation of Evidence – Testimony of Prosecutrix – Trial Court acquitted the accused on the ground that prosecution failed to produce the lady doctor who examined the prosecutrix and her evidence was necessary for corroboration of the testimony of prosecutrix – Held – It is not in dispute that at the time of incident, as per the ossification test conducted by the doctor, (PW-6), prosecutrix was below 15 years – Prosecutrix also stated that she was 12 years old – No question regarding her age was put forth by counsel of accused to the parents of prosecutrix, hence it was established that prosecutrix was a minor and under the age of 15 years and therefore no question of consent arises – Testimony of prosecutrix is in corroboration with FIR, statement of her parents and

Investigating officer also and thus is unshaken and found to be trustworthy – No contradictions between her statement and FIR – FIR on the same day, thus no undue delay in FIR – No personal enmity between the family of prosecutrix and the accused – Trial Court wrongly evaluated the prosecution evidence and findings are based on presumptions and surmises – Trial Court judgment set aside – Accused is found guilty and hereby convicted and sentenced for the offence u/S 376 IPC – Appeal allowed: *State of M.P. Vs. Siddhamuni, I.L.R. (2018) M.P. 121 (DB)*

– Section 376 – Rape – Testimony of Prosecutrix – Credibility – Medical Evidence – Held – As per medical evidence, no sign of sexual intercourse found – Prosecutrix, during or after incident she did not make any hue and cry or made any effort to call attention of persons, working nearby the field – After returning home, she has not even narrated the incident to her in-laws – Husband and mother-in-law not examined and there is no explanation thereof – Contradictions and omissions in FIR and her deposition – Independent witness simply deposed that there was a quarrel with accused – Infirmity in statement of prosecutrix – Prosecution has not established the case beyond reasonable doubt – Conduct of prosecutrix reflects that she exaggerated the story to give natural shape to incident – Reasonable possibility of false implication cannot be ruled out – Conviction set aside – Appeal allowed: *Badri Vs. State of M.P., I.L.R. (2019) M.P. 196*

– Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of charge – Rape with two prosecutrix – In FIR, prosecutrix did not allege rape by applicant but it was alleged that he escorted both the prosecutrix, to bus stand and assured that he will help them to get marry with other two co-accused persons – Applicant was absconding – In trial against two co-accused, prosecutrix alleged that she was subjected to rape by applicant – Held – It appears that prosecutrix implicated the applicant subsequently with ulterior motive – Charge/ prosecution u/s 376 set aside: *Pukhraj Singh Vs. State of M.P., I.L.R. (2016) M.P. 248*

– Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 378(3) – Rape – Leave to appeal – Prosecution has failed to prove that the prosecutrix was minor – Father of the prosecutrix died & mother left her, therefore, they were not examined – Uncle has admitted the possibility that the prosecutrix could be more than 18 years – As regards the date of birth recorded in the mark sheet, author of the entry was not examined, therefore, the same has no evidentiary value – Despite having numerous opportunities, she did not raise an alarm to invite intention of others – She was a consenting party – Held – Since the Trial Court has considered the entire material evidence on record and on a proper appreciation of evidence, has passed a reasoned order of acquittal, impugned order does not suffer from illegality, manifest error or perversity – No interference is warranted: S*tate of M.P. Vs. Ramratan @ Bablu Loni, I.L.R. (2016) M.P. 2633 (DB)*

– Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 378(3) – Rape – Leave to appeal – Prosecution has failed to prove that the prosecutrix was minor – Version of the prosecutrix recorded u/S 161 differs substantially from the evidence given by her in the Court – Despite having numerous occasions, she did not raise an alarm to invite attention of others – She was a consenting party – Held – The trial Court has considered the entire material evidence on record and on a proper appreciation of evidence has passed a reasoned order of acquittal – Impugned order does not suffer from illegality, manifest error or perversity – No interference is warranted: *State of M.P. Vs. Salman Khan, I.L.R. (2016) M.P. 2413 (DB)*

– Section 376 & 306 – Merg Intimation – Held – Father of deceased, who lodged merg intimation stated that he scolded his daughter and thus she took poisonous substance – In merg intimation, there is no mention that deceased told her father of any rape committed by accused as a result of which she committed suicide due to depression or self-torment: *State of M.P. Vs. Rajaram @ Raja, I.L.R. (2019) M.P. 523 (SC)*

– Section 376(1) – Rape – Testimony of Prosecutrix – Credibility – Injuries – Medical Evidence – Held – As per evidence of prosecutrix, appellant had axe with him and at the time of incident, had threatened to kill her, thus on account of fear she did not make any resistance and surrendered to save her life – In such circumstances, no question of sustaining any mark of resistance and as she was a married lady, it is not possible to found any mark of resistance on her private parts – Testimony cannot be discarded merely on ground of absence of medical evidence of forceful intercourse and mark of resistance – Appeal dismissed: *Boodhe @ Roop Singh Vs. State of M.P., I.L.R. (2018) M.P. *102*

– Section 376 (1) & 506-B and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) (unamended) – Appreciation of Evidence – Held – Prosecutrix in her deposition has not stated that appellant committed rape on her – It is also not established that rape was committed on the ground that she was a member of ST community – It is a case of consensual sexual relation and hence appellant cannot be held guilty – Prosecution failed to establish/prove the case beyond reasonable doubt – Appellant acquitted – Appeal allowed: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Section 376(2)(g) – Gang Rape – Minor Girl – Testimony of Prosecutrix – Medical Evidence – Female Accused – Relying the statement of prosecutrix when it is not corroborated by medical evidence – Held – In the present case, prosecutrix deposed that she was threatened by appellants that if she resist, she will be thrown into well – Statement of prosecutrix and reason for not putting resistance is trustworthy

– Statement of rape victim must be treated on a higher pedestal – Further held – Appellant No. 2 being a woman cannot be charged for offence u/S 376 IPC even if she facilitates the act of rape – Appellant no. 1 alone cannot be convicted for gang rape but certainly guilty u/S 376 IPC for committing rape on minor girl – Trial Court rightly convicted appellant No.1 – Conviction of appellant No. 2 set aside: *Chhotelal Vs. State of M.P., I.L.R. (2018) M.P. 1698*

4. Child Witness

– Section 376 & 306 – Appeal against Acquittal – Child Witness – Credibility – Appreciation of Evidence – Held – Sister of deceased aged 12 yrs. stated in cross-examination, she was threatened by police and thus at the instance of police, she made a statement in favour of prosecution case – Difficult to rely on uncorroborated testimony of a 12 yrs. old girl who is likely to have been tutored or under influence while giving her testimony – No other material or medical evidence to substantiate prosecution case – Accused rightly acquitted: *State of M.P. Vs. Rajaram @ Raja, I.L.R. (2019) M.P. 523 (SC)*

5. Circumstantial Evidence

– Sections 376A, 302 & 201(II) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(i), (m) r/w Section 6 – Circumstantial evidence – Appreciation of evidence – Appellant – Driver of vehicle – Deceased – Girl, aged 5 years – Rape – Murder – Facts – Deceased alongwith her uncle was going to school in four wheeler owned and being driven by the appellant – In between, uncle of the deceased got down from the vehicle and entrusted custody of the deceased to the appellant for dropping her at school – Deceased not reached the school – Body of the deceased recovered from the well – Dead body of the deceased and her school bag were recovered pursuant to disclosure statement of appellant/accused – Post Mortem report – Sexual assault and throttling – Trial Court – Death sentence – Reference & Appeal – Held – As the whole case is based on circumstantial evidence and the chain of events are complete and there is no material contradiction and omission in evidence of prosecution witnesses, so the conviction & sentence awarded u/S 201 (II), 376A and 302 of IPC is affirmed as it is covered under Rarest of Rare Cases – Reference answered accordingly: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

6. Consent/Compromise

– Section 375 – Consent – Held – Consent for the purpose of Section 375 requires voluntary participation not only after exercise of intelligence based on knowledge of the significance and moral quality of the act, but also after having fully

exercised the choice between resistance and assent – Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances: *Amit Kumar Vs. State of M.P., I.L.R. (2019) M.P. 2145*

– Section 375-Sixthly & 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Consent & Compromise – Held – Where prosecutrix is minor, consent is immaterial – When consent is immaterial at the time of commission of offence then under no circumstances, her consent would become relevant for compromise – Submission of applicant that he has married the prosecutrix and thus prosecution should be quashed, cannot be accepted under any circumstances – Honour of woman cannot be put to stake by compromise or settlement – Application dismissed: *Arif Khan Vs. State of M.P., I.L.R. (2020) M.P. 1460*

– Section 376 – Rape – Consent – Age of prosecutrix found between 15-17 years in ossification test – No injury marks on body or private parts, after recovery prosecutrix has not stated to anyone about the fact of rape, prosecutrix was above 16 years of age and on the date of incident the age of consent for the offence u/S 376 of IPC was 16 years so prosecutrix was a consenting party to the act – Appeal partially allowed – Conviction & sentence u/S 376 of IPC set aside: *Mahendra Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. 128*

– Section 376 & 498-A – Sexual Intercourse on Pretext of Marriage – Consent – Held – Consent for sexual intercourse obtained by applicant No. 1 inducing believe to prosecutrix that he would marry her seems to be a "fraud" practised on her and she was deceived by false assurance – Such deceitful consent is not a free consent – Offence comes within ambit and ingredients of definition of rape – Application dismissed: *Sandeep Vs. Neelam, I.L.R. (2018) M.P. *98*

– Section 376(2)(g) – Rape – Age of Prosecutrix – Consent – Held – As per the evidence on record, age of prosecutrix found to be below 16 years and therefore appellant's plea of consent is of no assistance to him: *Chhotelal Vs. State of M.P., I.L.R. (2018) M.P. 1698*

– Section 376 (2)(n) & 506-II – Framing of Charge – Rape on Pretext of Marriage – Held – Prosecutrix, a married woman having a child, started living with accused as husband and wife, without getting decree of divorce and knowing fully that accused was also a married person – Prima Facie, she herself gave consent for sexual intercourse – It cannot be presumed that consent was obtained giving false assurance of marriage – Charge quashed – Application allowed: *Amit Kumar Vs. State of M.P., I.L.R. (2019) M.P. 2145*

7. Death Sentence/Rarest of Rare Cases

– Section 376-A – Circumstantial Evidence – Death Sentence – Rarest of Rare Case – Residual Doubt – Rape and murder of minor girl of 13 years – Held – Case contains some residual doubts – Contradictions in statement of witnesses – Viscera samples were spoilt and remained unexamined – No report to show that DNA of deceased was present on nails scrapings of accused – Although conviction is upheld but case falls short of "rarest of rare cases" – Invoking the special sentencing theory, death penalty substituted with life imprisonment without remission – Appeal partly allowed: *Ravishankar @ Baba Vishwakarma Vs. State of M.P., I.L.R. (2020) M.P. 289 (SC)*

– Section 376-A – Circumstantial Evidence – "Residual Doubt" & "Reasonable Doubt" – Rarest of Rare Category – Discussed and explained: *Ravishankar @ Baba Vishwakarma Vs. State of M.P., I.L.R. (2020) M.P. 289 (SC)*

8. Delay in FIR

– Section 375 & 376 – Rape – Delay in FIR – Explanation – Held – Incident is of 6th March when uncle of prosecutrix was not in village and on his return on 8th March, complaint was lodged – Medical examination of prosecutrix was done on 9th March and FIR was registered on 10th March – Delay properly explained which was not considered by the High Court: *State of M.P. Vs. Preetam, I.L.R. (2019) M.P. 241 (SC)*

– Section 376 – Delay in FIR – Held – Incident occurred on 11.07.2015 and FIR lodged on 13.07.2015 – Delay is quite long – No plausible explanation by prosecution: *Rajendra Singh Vs. State of M.P., I.L.R. (2019) M.P. *19*

– Section 376 – Rape – Delayed FIR – Effect – Held – Supreme Court concluded that in case of rape, delay in lodging of FIR is a normal phenomenon – Family members of victim for reputation of family take time to decide whether FIR should be lodged or not – In the present case, factum of kidnapping was not known to the parents of prosecutrix, they made efforts to search the victim in possible places and when all efforts went in vain, they lodged the FIR – Delay is properly explained – No reason to disbelieve the prosecution story: *Chhotelal Vs. State of M.P., I.L.R. (2018) M.P. 1698*

– Section 376 – Rape – Delay in FIR – Appreciation of Evidence – Held – FIR lodged after almost 30 hours of the incident and medical examination done thereafter – There was a considerable delay in FIR which has not been explained by the prosecution – Further, one Ranjit Singh who allegedly accompanied the accused was not examined – Statement of prosecutrix do not inspire confidence: *Lal Singh Vs. State of M.P., I.L.R. (2019) M.P. 203*

– Section 376(1) – Rape – Delay in FIR – Delay of one day – Held – Prosecutrix explained that her husband was not at home, he returned in evening and on next date, FIR was lodged – In sexual offences, such delay is immaterial and is not sufficient to discard the testimony of prosecutrix: *Boodhe @ Roop Singh Vs. State of M.P., I.L.R. (2018) M.P. *102*

– Section 376 (1) & 506-B and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Delayed FIR – Held – No plausible reason for not lodging FIR of alleged rape for 8 months – Delay not explained by prosecution: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Section 376(2)(f) and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Delayed FIR – Held – FIR lodged after three days of the incident – Prosecutrix is a child belonging to village and in such cases, victim and her family members find it difficult to go and lodge a report at police station due to shame and fear of defamation in society – Testimony of prosecutrix cannot be discarded merely on basis of delayed FIR: *Dhokan @ Dhokal @ Gokul Vs. State of M.P., I.L.R. (2019) M.P. 1541 (DB)*

9. Fair Investigation

– Section 376 & 506 – Free and Fair Investigation – Source of Information/ Material – Offence u/S 376 and 506 IPC registered against appellant – Accused/ appellant seeking to produce certain photographs, compact Disc (C.D.) and other cogent material before investigation agency to establish his innocence – Held – Investigating agency should not feel diffident or shy of allowing accused to furnish or disclose material/information which may help investigation to discover truth which is the prime object behind every process of crime investigation – Cr.P.C. or M.P. Police Manual do not restrict or prohibit the investigating agency from accepting relevant material/information during process of investigation – Investigating agency should be receptive to all possible sources or material/information which may assist the agency to conclude the truth – One of the sources can also be the accused – Investigating Authority is directed to allow appellant to submit all such relavant information which if done shall be considered objectively without discarding it merely because of being furnished by accused – Writ Appeal disposed: *Jitendra Singh Narwariya Vs. State of M.P., I.L.R. (2017) M.P. *94 (DB)*

10. Framing of Charge

– Sections 376 & 376(2)(n) and Criminal Procedure Code, 1973 (2 of 1974), Sections 227 & 228 – Framing of Charge – Misconception of fact – Accused had sexual intercourse with prosecutrix on false promise of marriage – Whether the consent was given under misconception of fact or because of love and passion felt by prosecutrix

for the accused, can be decided only after the trial – Trial Court rightly framed Charges – Revision dismissed: *Sheikh Mubarik Vs. State of M.P., I.L.R. (2016) M.P. 1820*

11. Hearsay Evidence

– Section 376 and Evidence Act (1 of 1872), Section 6 – Hearsay Evidence – Admissibility – Held – As both prosecution witnesses are close relatives (*mausi and mami*) of prosecutrix and that she lost her mother long back before incident, she confided in them as to the person who was behind her pregnancy – It does not fall under hearsay evidence – In fact and situation, evidence reliable and admissible u/S 6 of the Act of 1872: *Ramnath Vs. State of M.P., I.L.R. (2017) M.P. 2706 (DB)*

12. Hostile Witness

– Section 376 & 342 – Rape – Conviction – Appreciation of Evidence – Hostile Witnesses – Held – Evidence of prosecution witnesses cannot be totally rejected merely because they were declared hostile – Evidence of such witnesses can be accepted to the extent their versions are found to be dependable on a careful scrutiny thereof – Witnesses supported the prosecution story at the stage of examination in chief but after 5 months when they were cross examined they were declared hostile on issue of identification of appellant – In instant case, other material and circumstances available on record corroborates earlier version of witnesses which are supported by FIR, medical evidences and FSL Report – Such version can be relied – Appellant was rightly convicted – Appeal dismissed: *Rafiq Khan Vs. State of M.P., I.L.R. (2018) M.P. 1996*

13. Identification of Accused

– Section 376 and Evidence Act (1 of 1872), Section 9 – Rape of Minor Girl aged about 6 years – Life Imprisonment – Test Identification Parade – Appreciation of Evidence – Held – If the minor prosecutrix aged 6 years is sexually violated by a fully grown up man, then because of fear, the conduct of her in not looking at appellant, cannot be treated to be unnatural or doubtful – During evidence, when after great persuasion by Court, the prosecutrix looked at appellant, she immediately identified him as the person who committed rape with her – Identification of appellant is proved beyond reasonable doubt – Ocular evidence is well supported by medical evidence – Further held – Test Identification Parade conducted by police can be treated as corroborative piece of evidence but substantive piece of evidence is identification of appellant in the Dock – Appellant rightly convicted – Appeal dismissed: *Aftab Khan Vs. State of M.P., I.L.R. (2018) M.P. 1194 (DB)*

14. Medical Evidence/DNA Test

– Section 375 & 376 – Rape – Consent – Medical Evidence – Held – As per doctor's evidence, hymen was torn and swelling present in vagina having redness suggesting sexual intercourse in the occurrence – Absence of external injury on person of prosecutrix does not conclude a consent on the part of prosecutrix – Evidence of prosecutrix is supported by medical evidence and evidence of prosecution witness who saw the accused running from the scene of occurrence – Offence made out – Appeal allowed: *State of M.P. Vs. Preetam, I.L.R. (2019) M.P. 241 (SC)*

– Section 376 – Medical Evidence – DNA Test – Authenticity – Held – As per DNA report, although DNA profile of male was found on petticoat but it was not of petitioners – Prosecutrix, a 45 yrs. old married woman, it is possible that male DNA may be of her husband – Further, no male DNA detected in vaginal slide – In case of rape, DNA report is most important piece of evidence – No injury found – False implication of accused cannot be ruled out – DNA Report is supported by Medical Evidence – Charge framed against petitioners quashed – Revision allowed: *Rajendra Singh Vs. State of M.P., I.L.R. (2019) M.P. *19*

– Section 376 – Rape – Medical Examination – Credibility – Held – Prosecutrix, an adult married woman – FIR was lodged on the next day of incident and thereafter she was medically examined – In absence of explanation of her stay in the night of the date of incident, as she was a married woman, presence of semen on vaginal swab and on undergarments loses its significance – Further, as per her statement she was thrown on rough surface, does not get any corroboration from medical evidence – No external injury found on her person – Conviction not sustainable – Appeal allowed: *Lal Singh Vs. State of M.P., I.L.R. (2019) M.P. 203*

– Section 376 – Rape – Testimony of Prosecutrix – Medical Evidence – Injury – Held – Apex Court concluded that guilt in rape case can be based on uncorroborated evidence of prosecutrix – Her testimony should not be rejected on basis of minor discrepancies and contradictions – Further, absence of injuries on private parts of victim will not by itself falsify the offence nor can be construed as evidence of consent – False charges of rape are also not uncommon where parent persuade the obedient daughter to make false charges either to take revenge or extort money or to get rid of financial liability, thus whether there was rape or not would depend ultimately upon facts and circumstances of each case: *Bhagwan Vs. State of M.P., I.L.R. (2019) M.P. 184 (DB)*

– Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 53-A – DNA Profiling – Held – Provision of Section 53-A Cr.P.C. was inserted w.e.f. 23.06.06 whereas the incident is of 2005, thus it was not mandatory for prosecution

to get DNA profiling of prosecutrix, her fetus and appellant to ascertain that appellant was the father of fetus – Non holding of DNA test will not affect the prosecution case adversely: *Ramnath Vs. State of M.P., I.L.R. (2017) M.P. 2706 (DB)*

– Section 376 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) – Rape – Testimony of Prosecutrix – Credibility – Medical Evidence – Held – Conviction based on sole testimony of prosecutrix – None of the witnesses has corroborated her version – Medical evidence does not show that offence of rape has been committed forcibly – Version of prosecutrix seems to be improbable and unreliable – On account of previous enmity/quarrel regarding money transaction, false implication of appellant cannot be ruled out – Benefit of doubt can be extended to appellant – Conviction cannot be sustained – Appeal allowed: *Indal @ Inderbhan Vs. State of M.P., I.L.R. (2018) M.P. 2959 (DB)*

– Section 376(2)(f) – Rape of Minor Girl – Interested Witness – Medical Evidence – Held – FIR duly corroborated by statement of prosecutrix where she specifically stated about the act of appellant – During examination of prosecutrix, Doctor found bleeding from private parts and also found injuries and gave a definite opinion of intercourse – No reason to disbelieve testimony of prosecutrix – Appellant rightly convicted – Appeal dismissed: *Dhokan @ Dhokal @ Gokul Vs. State of M.P., I.L.R. (2019) M.P. 1541 (DB)*

– Section 376(2)(i) & 201 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5 & 6 – Sexual Assault – Held – No evidence on record to establish any penetrative sexual assault or commission of rape on minor girl – No sign of internal or external injury on private part of deceased – As per FSL and DNA report, ingredients of commission of offence not proved – Conviction u/S 376(2)(i) IPC and u/S 5/6 of the Act of 2012 are set aside: *In Reference Vs. Shyam Singh @ Kallu Rajput, I.L.R. (2019) M.P. 1301 (DB)*

– Section 376(2)(g) – Rape – Conviction – Medical Evidence – Injury – Held – If sexual intercourse committed forcibly by two persons, prosecutrix would certainly receive injuries – Absence of any injury on person of prosecutrix including private parts leads to conclusion that either appellants did not resort to offence of forcible sexual intercourse or it was with her tacit consent – Statement of prosecutrix is contrary to medical evidence and thus do not inspire confidence – Conviction set aside – Appeal allowed: *Dhanraj Singh Vs. State of M.P., I.L.R. (2017) M.P. *134*

15. Presumption

– Section 376(2)(g) & Evidence Act (1 of 1872), Section 114-A – Presumption – Onus of Proof – Medical Evidence – Held – In a rape case, the onus is always on prosecutrix to prove affirmatively each ingredients of offence, it seeks

to establish and such onus never shifts – Trial Court erred in raising presumption u/S 114-A of the Act of 1872 in absence of any medical evidence regarding resistance/ injury: *Dhanraj Singh Vs. State of M.P., I.L.R. (2017) M.P. *134*

16. Proof of Age

– Section 375 & 376 – Rape – Consent – Proof of Age – Held – Prosecution got examined the Head Master of primary school where he stated the date of birth of prosecutrix according to which she was 12 yrs. of age at the time of occurrence – School certificate was also produced – School registers are authentic documents being maintained in official course entitled for credence of much weight unless proved otherwise – Victim being aged 12 yrs., her consent or otherwise was of no relevance to bring the offence within meaning of Section 375 IPC: *State of M.P. Vs. Preetam, I.L.R. (2019) M.P. 241 (SC)*

– Section 376 – Rape – Age of Victim – Birth Certificate – Held – Birth certificate issued by Station House Officer – There is no mention whether he is entitled to issue such certificate – No explanation for not producing birth register though available with police – Such certificate cannot be relied – Age determined by ossification test is more probable and reasonable: *Bhagwan Vs. State of M.P., I.L.R. (2019) M.P. 184 (DB)*

17. Provision to Intervene/Locus

– Sections 376(2)(i), 376(2)(d), 363, 343 & 506, Protection of Children from Sexual Offences Act, (32 of 2012), Section 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 301 & 302 – Provision to Intervene – Locus Standi – Application by mother of prosecutrix where accused filed an application to intervene – Held – Although there is no provision in Cr.P.C. for granting permission to intervenor but u/S 482 Cr.P.C. the same can be granted for better adjudication of the matter – In instant case, proposed intervenor is the affected party, thus should be allowed to participate in the proceedings – Application allowed: *Uma Uikey Vs. State of M.P., I.L.R. (2018) M.P. *69*

18. Quashment of FIR/Proceedings

– Section 376 and Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Section 3(1)(xii) - Rape - Quashment of FIR – Held - Though prosecutrix belonged to a scheduled caste, she was a mature and educated lady, worked in different organizations like NGO's and Insurance Companies - In the FIR as well as statements u/S 161 and 164 Cr.P.C., she concealed the fact of her earlier marriage which was in existence from 2007 and continued till 2012 when the decree of divorce was passed - From 2010 to 2012, she was in a live-in-relationship with the

petitioner, knowingly that she continued to be a legally wedded wife from her earlier marriage and thus her sexual relationship with the petitioner was in nature of adulterous relationship - Due to her subsisting valid marriage, there was no question of any one being in a position to induce her into a physical relationship under an assurance of marriage thus contentions of prosecutrix is per se false and unacceptable - It was a relationship between two consenting adults for mutual sexual enjoyment without any commitment to marriage - Allowing the prosecution to continue would amount to abuse of the process of Court - FIR quashed and charges framed are set aside - Petition allowed: *Anant Vijay Soni Vs. State of M.P., I.L.R. (2018) M.P. 203*

– Section 376(2) & 506, Protection of Children from Sexual Offences Act, (32 of 2012), Sections 3, 4 & 6 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Compromise – Effect – Held – Even if the prosecutrix/victim compromised with accused, the offence being a heinous and serious one, cannot be quashed u/S 482 Cr.P.C. – It is a crime against society and it becomes responsibility of State to punish the offender – Compromise regarding offences under the special statute like POCSO Act, 2012 would not provide quashment of criminal proceedings – Even if there is a settlement between offender and victim, their will would not prevail as in such case, matter is in public domain – Application dismissed: *Sanjay Vs. State of M.P., I.L.R. (2018) M.P. 1828*

– Section 376 – See – Criminal Procedure Code, 1973, Section 482: *Pankaj Tiwari Vs. State of M.P., I.L.R. (2016) M.P. 1583*

19. Sentence

– Section 376 – Sentence – Deterrence is one of the essential ingredients of sentencing policy – Principle of proportionality between offence committed and punishment imposed are to be kept in mind – Court must try to visualize the impact of the offence on society as a whole as well as on the victim – Girl aged about 6 years had been raped – Life sentence awarded is just and proper: *Aftab Khan Vs. State of M.P., I.L.R. (2018) M.P. 1194 (DB)*

20. Miscellaneous

– Section 376 – See – Criminal Procedure Code, 1973, Section 439: *Lalji Chaudhary Vs. State of M.P., I.L.R. (2018) M.P. 1830*

– Section 376A – See – Protection of Children from Sexual Offences Act, 2012, Section 5(i), (m) r/w Section 6 & 42: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Sections 376 (2)(h) & 302 – See – Criminal Procedure Code, 1973, Section 363: *In Reference Vs. Rajendra Adivashi, I.L.R. (2017) M.P. 166 (DB)*

• **– Section 379** – See – Criminal Procedure Code, 1973, Section 451 & 457: *Pratap Vs. State of M.P., I.L.R. (2020) M.P. 1490*

– Section 379 – See – Criminal Procedure Code, 1973, Section 482: *Arpit Jain Vs. Vijay Sisodiya, I.L.R. (2016) M.P. 919*

– Section 379 & 392 – Theft & Robbery – Chain Snatching – Appellant No. 1 convicted u/S 392 for chain snatching – Held – Section 392 is an aggravated form of theft – To charge the accused u/S 392, prosecution required to establish that while committing theft, offender has voluntarily caused hurt or attempted to cause death or hurt or wrongful restrain or fear of instant death etc. – No such allegation against appellant No. 1, thus wrongly convicted u/S 392 – Conviction altered from Section 392 to Section 379 IPC – Appeal partly allowed: *Mohd. Firoz Vs. State of M.P., I.L.R. (2020) M.P. 1716*

– Section 379 & 411 and Evidence Act (1 of 1872), Section 114 – Stolen Property – Presumption – Held – Merely because property found in possession of applicant, and he failed to produce any receipt or voucher in respect of its purchase, it cannot be presumed that property is a stolen property unless established that same is transferred by way of theft, extortion, robbery or by misappropriation – Loot also not established by prosecution – Applicant cannot be held guilty u/S 411 IPC with aid of presumption u/S 114 of Evidence Act – Conviction set aside – Revision allowed: *Deepak Ludele Vs. State of M.P., I.L.R. (2020) M.P. 518*

– Section 379 & 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Criminal Proceedings – Wife left matrimonial house alleging dowry demands and cruelty by husband and mother-in-law – She lodged FIR u/S 498-A, filed complaint case under Domestic Violence Act and also filed a case seeking maintenance – Subsequently, in-laws also filed a complaint case u/S 379 IPC against wife, her father and her cousin alleging that while leaving matrimonial house, wife took all ornaments with her – Cognizance taken and summons issued – Challenge to – Held – It is a matrimonial/civil dispute, daughter-in-law taking her belongings / ornaments is not an act of theft – No evidence that ornaments were not stridhan – No FIR was lodged by respondent – Criminal case u/S 379 IPC filed as a counter blast – Proceedings against applicants is abuse of process of Court/law – Proceedings quashed – Application allowed: *Saiyad Asfaq Ali Vs. Kaisar Begum Owaisi, I.L.R. (2017) M.P. 2567*

– Section 380 – See – Criminal Procedure Code, 1973, Section 167(2), 436A & 439: *Hyat Mohd. Shoukat Vs. State of M.P., I.L.R. (2020) M.P. 2174*

– Section 380 – See – Criminal Procedure Code, 1973, Section 436A: *Hyat Mohd. Shoukat Vs. State of M.P., I.L.R. (2020) M.P. 2174*

– Section 380 & 401 – See – Criminal Procedure Code, 1973, Section 437 (6): *Bhagwan Vs. State of M.P., I.L.R. (2016) M.P. 3402*

– Sections 380, 411 & 457 – See – Criminal Procedure Code, 1973, Section 437(6): *Aasif @ Nakta Vs. State of M.P., I.L.R. (2016) M.P. 2391*

– Section 384 – See – Criminal Procedure Code, 1973, Section 482: *Deepti Gupta (Smt.) Vs. Smt. Shweta Parmar, I.L.R. (2016) M.P. 2869*

– Section 392 – See – Criminal Procedure Code, 1973, Section 482: *Ashish @ Bittu Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2114*

– Section 394 & 397 and Evidence Act (1 of 1872), Section 9 – Test Identification Parade - Delay – Effect – Held – Mere delay in holding Test Identification Parade, by itself cannot be a ground to discard the identification of accused – Purpose of conducting Test Identification Parade during investigation is for satisfaction of investigating officer that the suspect is the real culprit, but the substantive evidence is identification in the Court - Test Identification Parade may be discarded on ground of delay but where delay is duly explained or where it occurred due to reasons beyond the control of investigating officer, then delay is not fatal - Effect of delay has to be considered in the light of facts and circumstances of each case – During evidence where an explanation is not sought from investigating officer for holding the Test Identification Parade belatedly, then delay itself may not be fatal: *Tilak Singh Vs. State of M.P., I.L.R. (2018) M.P. *13*

– Sections 395, 396, 397 & 458 and Evidence Act (1 of 1872), Section 9 – Conviction – Life Imprisonment – Appreciation of Evidence – Test Identification Parade – Held – Conviction based on identification of appellants and seized articles – Identification by way of Test Identification Parade (TIP) is primary evidence and is not a substantive piece of evidence – Such evidence can only be used for corroboration by witnesses before Court – When witness fail to identify accused in Court, there remains no substantive piece of evidence at all to convict the appellants – Similarly, seized articles identified by witnesses in TIP were not produced for exhibition and corroboration in Court and hence such identification cannot be relied upon to convict appellants – Further held – Since lodging of FIR till completion of investigation, prosecution witnesses have not named any of appellants identifying them in Court nor the characteristics of their identification was disclosed – Impugned order unsustainable in law and is set aside – Appeal allowed: *Suraj Nath Vs. State of M.P., I.L.R. (2018) M.P. 1761 (DB)*

– Sections 395, 397, 398 & 459 – Conviction – Identification of Accused and Recovered Articles – Delay – Effect – Test identification parade was conducted after 11 months of incident – Held – Prosecution witnesses identified the accused

persons during the test identification parade as well as before the trial Court – Nothing came in cross examination of the prosecution witnesses who identified the accused persons, to make the identification during investigation to be doubtful – Witness did not admit in cross examination that accused persons were shown to them prior to test identification parade – Accused rightly identified by the witnesses during test identification parade – Further held – So far as articles are concerned, they belonged to the complainant and other injured persons and therefore their identification cannot be doubted – Involvement of accused persons in the crime was properly proved – Appeal dismissed: *Padamnath Vs. State of M.P., I.L.R. (2017) M.P. 3068 (DB)*

– Section 396 – When 5 persons were not involved in a crime of robbery then it is not a dacoity – For proof of offence u/S 396 of IPC it is necessary to prove that the crime was done by 5 persons – When it is not proved then none of the appellant can be convicted of offence u/S 396 of IPC however they can be convicted for the offence u/S 394 r/w Section 397 of the IPC: *Narendra @ Chunna Kirar Vs. State of M.P., I.L.R. (2017) M.P. 364 (DB)*

– Section 396 & 397 – Dacoity and Murder – Conviction – Child Witness – Statement of the child witness is supported by medical evidence and also the fact in the spot map where it was shown that wall of the house was broken and from that space, accused persons entered into the house – Looking to his statement u/S 161 Cr.P.C. and medical evidence, his statement cannot be discarded as unreliable – Oral evidence is fully supported by medical evidence, FIR was promptly lodged specifically mentioning the name of accused persons, duly identified by witnesses – No interference is called for – Appeal dismissed: *Gagriya Vs. State of M.P., I.L.R. (2018) M.P. 159 (DB)*

– Section 396 & 398 and Arms Act (54 of 1959), Section 25(1)(a) & (b) – Independent witnesses turning hostile – Effect – Held – Apex Court concluded that mere fact that a witness is police officer, does not by itself gives rise to any doubt about his creditworthiness – In present case, evidence of IO is reliable as there is nothing in cross examination of IO to discredit his evidence: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 396 & 398 and Arms Act (54 of 1959), Section 25(1)(a) & (b) – Seized Weapon – FSL report shows that seized knife contained human blood – No explanation by accused – Apex Court held that as recovery was made pursuant to disclosure statement by accused and in serological report human blood was found, the non-determination of blood group had lost its significance: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Sections 396, 398 & 412 – Test Identification Parade – Held – Although manner of identification not described in identification memo, this is not a major lacuna

as to render whole identification proceedings unreliable: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Sections 396, 398 & 412 and Arms Act (54 of 1959), Section 25(1)(a) & (b) – Seizure Memo – Delay – Seizure memo prepared after 3 weeks from registration of offence – Held – Case involved number of accused persons, where dozens of piece of evidence were required to be collected – No unusual delay: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Sections 396, 398 & 412, Arms Act (54 of 1959), Section 25(1)(a) & (b) and Evidence Act (1 of 1872), Section 7 – Dacoity – Circumstantial Evidence – Bank cash looted while it was being transported to other branch – Accused failed to explain the possession of such huge cash, where currency notes were wrapped by bank slip carrying seal of bank – Seizure of cash box, firearm and vehicle used in crime, from accused, duly proved – Presumption u/S 412 IPC not rebutted by accused – As per call records, accused persons were in touch with each other during the concerned period of crime and even thereafter – Offence proved beyond reasonable doubt – Conviction affirmed – Appeals dismissed: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 406 – See – Criminal Procedure Code, 1973, Section 408: *Sadhna Kothari (Smt.) Vs. Shri Abhay Kumar Dalal, I.L.R. (2016) M.P. 262*

– Section 406 – See – Criminal Procedure Code, 1973, Section 482: *Antim Dubey Vs. State of M.P., I.L.R. (2018) M.P. 1588*

– Sections 406, 420 & 409 and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Cheating – Consolidated FIR – Held – Each and every act of cheating is a separate offence in itself, requiring separate FIR – There are several victims in the case – Police should not have lodged consolidated FIR – One victim cannot be treated as complainant and remaining victims as witnesses: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Sections 406, 420 & 409 and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Compounding of Offence – Requirement – Held – There are several victims in the present case but in support of application u/S 320 Cr.P.C., affidavits of only petitioner and complainant has been filed – Each and every offence of cheating amounts to separate offence and thus affidavit of all victims is necessary for compounding the offence – Photocopies of affidavits cannot be considered – Application to quash FIR on ground of compromise dismissed: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Sections 406, 420 & 409 and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Compounding of Offence – Stage of Trial – Held – Stage of

investigation/trial is one of the important factors for considering application for quashment of FIR/criminal proceedings on ground of compromise: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Sections 406, 420 & 409 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Grounds – Held – Even after granting anticipatory bail by this Court, petitioner has not complied with conditions of bail nor has furnished the bail – Not even appeared before investigating officer, inspite of fact that charge sheet has been filed, thus adopted a non-cooperative attitude with police – Has also suppressed material facts – Criminal prosecution cannot be quashed – Application dismissed: *Manoj Kumar Goyal Vs. State of M.P., I.L.R. (2020) M.P. 522*

– Sections 406, 420, 463, 464, 467, 468, 471/34 & 120-B – See – Criminal Procedure Code, 1973, Sections 156(3) & 482: *Vishwa Jagriti Mission (Regd) Vs. M.P. Mansinghka Charities, I.L.R. (2016) M.P. *16*

– Sections 406, 420, 467, 468, 471 & 120 – See – Criminal Procedure Code, 1973, Section 482: *Amrendra Kumar Vs. State of M.P., I.L.R. (2016) M.P. *10*

– Section 406 & 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Grounds – Held – Apex Court concluded that relatives of husband should not be roped in on the basis of omnibus allegations unless specific allegations, instances of their involvement in crime, are made out: *Uma Shankar Vs. State of M.P., I.L.R. (2019) M.P. 2601*

– Section 406 & 498-A/34, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Relatives of Husband – Held – Petitioners are mother, father and sister of husband – Wife living with husband separately from petitioners – No specific allegations with regard to any of the petitioners except common general allegations of demand of dowry – It appears that wife lodged false FIR as a counterblast to the petition filed by husband u/S 9 of Hindu Marriage Act – Proceedings quashed against petitioners – Application allowed: *Uma Shankar Vs. State of M.P., I.L.R. (2019) M.P. 2601*

– Sections 407, 409 & 420 – Framing of Charge – Ingredients – Applicant, the owner of warehouse from where foodgrains of farmers were found missing – Charge framed u/S 409 & 420 IPC – Held – Principal offence of criminal breach of trust is prima facie made out but charge framed u/S 409 do not relate to warehouse keeper – Alleged offence specifically falls within purview of Section 407 IPC – Trial Court directed to frame charge u/S 407 IPC alongwith Section 420 IPC – Revision allowed: *Krishan Mohan Agrawal Vs. State of M.P., I.L.R. (2017) M.P. *140*

– Section 409 – Criminal Breach of Trust in Public Distribution System – Held – Goods under Public Distribution System are entrusted to the societies running

fair price shop to distribute according to scheme – Goods are held by a fair price shop under PDS on trust – If there is a violation of such trust, offence u/S 409 of IPC is made out: *Jagdish Korku Vs. State of M.P., I.L.R. (2016) M.P. 2418*

– Section 409 and Negotiable Instruments Act (26 of 1881), Section 138 – Criminal Breach of Trust – Ingredients – Held – After payment through RTGS, more amount was payable by respondents, thus in such circumstances, not returning the cheques and presenting the same for encashment by applicants, cannot be said to be an act of criminal breach of trust – Dispute is purely of civil nature – No case u/S 406 IPC made out: *Nike India Pvt. Ltd. Vs. My Store Pvt. Ltd., I.L.R. (2019) M.P. 1903*

– Section 409 & 120-B, Negotiable Instruments Act (26 of 1881), Section 138 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Scope – Held – No offence of criminal breach of trust made out – Complaint filed as a counter blast in the wake of action by applicants filing complaint against respondents u/S 138 of the Act of 1881 – Complaint filed maliciously for wreaking vengeance giving colour of criminal offence – Criminal proceedings set aside – Application allowed: *Nike India Pvt. Ltd. Vs. My Store Pvt. Ltd., I.L.R. (2019) M.P. 1903*

– Sections 409, 420, 467, 468, 471, 120-B and Prevention of Corruption Act (49 of 1988), Section 13(1)(d) and Special Police Establishment Act, M.P. (17 of 1947), Section 3 – Investigation – Jurisdiction of Local Police – Quashment of Charge-sheet – Held – Once the charge-sheet is filed, merely because the investigating agency has no jurisdiction to investigate the matter, charge-sheet cannot be quashed as it is not possible to say that cognizance on an invalid police report is prohibited and therefore a nullity – There is no provision in the Act requiring that the offences under this Act shall be investigated by Special Police Establishment only and not by the local police – Petition dismissed: *Manish Kumar Thakur Vs. State of M.P., I.L.R. (2018) M.P. 235 (DB)*

– Sections 409, 420, 467, 468, 471, 500 & 120-B r/w 34 – See – Criminal Procedure Code, 1973, Section 482: *K. Sheshadrivashu Vs. State of M.P., I.L.R. (2018) M.P. 1303*

– Sections 409, 420, 468 & 471 – See – Criminal Procedure Code, 1973, Section 156(3): *Lakhpat Singh Vs. State of M.P., I.L.R. (2018) M.P. *64*

– Section 409 & 467 – See – Criminal Procedure Code, 1973, Sections 227 & 228: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1510*

– Section 411 and Evidence Act (1 of 1872), Section 114 – Stolen Property – Burden of Proof – Held – For Section 411 IPC, burden of proof is on prosecution to prove that applicant received the stolen property: *Deepak Ludele Vs. State of M.P., I.L.R. (2020) M.P. 518*

– Section 411 & 412 – Ingredients – Appreciation of Evidence – Held – Regarding possession of cash in respect of 4 accused persons, there is no evidence to show that they knew that the cash is looted property as a result of dacoity – Memorandum statements also not recorded – At the same time, it can safely be presumed that they knew that it was a stolen property – These accused persons liable to be convicted u/S 411 and not u/S 412 IPC – Sentence reduced from 7 years to 3 years – Appeals partly allowed: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 411 & 412 and Evidence Act (1 of 1872), Section 114-A – Presumption – Held – Recovery made barely after 4 days of incident – Provisions of Section 114-A of Evidence Act gets attracted, where Court may presume that a person in possession of stolen goods soon after theft, is either thief or has received goods knowing them to be stolen, unless he can account for his possession: *Arun Vs. State of M.P., I.L.R. (2020) M.P. 1921 (DB)*

– Section 415 – Cheating – Delivery of property or consent for retention of property by any person is not necessary in all cases of cheating – Offence of cheating may be committed without aforesaid elements under second limb of section 415 – However allegation that respondent was 60 years of age and obtained her (Applicant/ Complainant) consent by mispresenting that he is 45 years of age is preposterous – Revisional court rightly dismissed the complaint: *Nilofer Khan (Smt.) Vs. Mohd. Yusuf Khan, I.L.R. (2016) M.P. 882*

– Section 415 & 420 – Cheating – Ingredients of – Discussed and explained: *Amita Shrivastava (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2868*

– Section 415 & 420 – Intention – Held – Apex Court concluded that in such matters what is important to consider is intention of accused at the time of inducement – If intention was dishonest at the very first time when the promise was made and contract was entered into, then offence of cheating is made out: *Praveen Vs. Amit Verma, I.L.R. (2019) M.P. 2164*

– Section 415 & 420 – Nature of Dispute – Civil/Criminal – Held – Had there been a history of commercial transaction between parties, subsequent dishonour of cheque in a later commercial transaction would show that transaction was a breach of contract only and dispute is of a civil nature: *Praveen Vs. Amit Verma, I.L.R. (2019) M.P. 2164*

– Section 415 & 420 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Cheating and Forgery – Ingredients – Applicants/land owners entered into agreement to sale with "A" whereby a cheque of Rs. 1 lakh was paid as advance which was later dishonoured – Vide notice, agreement was cancelled and applicants

entered into fresh agreement with "B" whereby a cheque of Rs. 10 lakh was paid as advance – Due to objection raised by "A", subsequent agreement was not finally executed and "B" also failed to pay the remaining amount – Applicants cancelled subsequent agreement and returned the advance amount to "B", who filed private complaint whereby cognizance taken by Court – Held – Petitioners were bonafide, there is no deception with fraudulent or dishonest intention – Complaint and order taking cognizance quashed – Application allowed: *Amita Shrivastava (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2868*

– Section 415 & 420 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Ingredients & Grounds – Held – Parties were unacquainted with each other and cheque of respondent got dishonoured in the first instance and subsequent attempts of complainant to get his money back failed – Respondent on one pretext or the other did not honour his commitment – Intention to deceive is perceivable from the very beginning – Cheating as described u/S 415 is attracted – JMFC directed to register case u/S 420 IPC – Application allowed: *Praveen Vs. Amit Verma, I.L.R. (2019) M.P. 2164*

– Section 417 & 420 – Cheating and dishonestly inducing delivery of property – Guilty intention is an essential ingredient of offence of cheating – Mens rea on the part of the accused must be established – In order to establish the offence u/s 420 intention to deceive should be in existence at the time when inducement was done – If there is no inducement, then this does not constitute the offence of cheating and framing of charge u/s 417 and 420 was not proper: *Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt, I.L.R. (2016) M.P. 599 (DB)*

– Sections 417, 420, 467, 468, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 482: *Muyinat Adenike Vs. State of M.P., I.L.R. (2018) M.P. *56*

– Sections 418, 420 & 423 – See – Criminal Procedure Code, 1973, Section 437(6): *Pramod Kumar Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1329*

– Section 419 & 420, Recognised Examination Act, M.P. (10 of 1937), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge Sheet – Admission in MBBS course – Investigation revealed that applicant appeared in PMT 2008 impersonating a candidate Manoj Kumar Dubey – Expert opinion proves applicant's handwritings similar to writings in answer sheets of Manoj – Photographs available on student details of VYAPAM is similar to photograph of applicant, which shows that he committed offence of impersonation and conspiracy – No ground for interference against Charge Sheet u/S 482 Cr.P.C. – Application dismissed: *Nandlal Gupta Vs. Union of India, I.L.R. (2019) M.P. 700 (DB)*

– Section 419 & 420 – See – Criminal Procedure Code, 1973, Section 482: *Balasaheb Bhopkar Vs. State of M.P., I.L.R. (2016) M.P. 1610 (DB)*

– Sections 419, 420, 467, 468 & 471 – Revision Against framing of Charge – Ingredients – Complainant invested in Unit Trust of India where applicant, being sister-in-law was named as guardian of her minor daughter – Subsequently complainant came to know that applicant opened an account by name of minor daughter where she named herself to be the natural mother of minor daughter and deposited the maturity amount received from the investment – Held – Applicant knowing well that she is not the natural mother has opened the account and shown herself to be the natural mother – When natural mother and father are alive, she had no authority to open the account and withdraw the amount – Prima facie, charges u/S 419 and 420 IPC are made out: *Pushpa Singh Vs. State of M.P., I.L.R. (2017) M.P. 2265*

– Sections 419, 420, 467, 468, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 438: *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

– Sections 419, 420, 467, 468, 471, 120-B r/w 34 – Quashment – Grounds – Sale of plot by forged documents and further mutation – Held – Petitioner with other co-accused jointly committed act of forgery – Petitioner has done the work of mutation as per his duty which is a part of entire chain of commission of offence – Without approval of petitioner, offence could not have been completed – Prima facie criminal conspiracy established against petitioner – Revision dismissed: *Dilip Kumar Vs. State of M.P., I.L.R. (2020) M.P. 1186*

– Section 419 & 468 – Appellant presented himself as security for accused by affixing his photograph on the original Krun-pustika belonging to one Kalu Bhil and presented himself before the Magistrate as Kalu Bhil – Held – Krun-pustika is an official document prepared by the Revenue Authority – The act of affixing photograph on the original Krun-pustika of another person, when the original holder was already dead, is alteration and is covered u/S 464 of IPC – Appeal is dismissed: *Kamlesh Vs. State of M.P., I.L.R. (2016) M.P. *5*

– Section 420, Copyright Act, (14 of 1957), Section 63 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Application for quashment of FIR – Allegation in written complaint that applicants are manufacturing electric goods using similar trade mark, which is registered in the name of M/s Vertex Manufacturing Co. Pvt. Ltd., therefore, customers were cheated – Held – Provisions of Copyright Act are not applicable for the purpose of electric products using same or similar trade mark – No complaint from any person or consumer that they have been cheated – No offence made out u/S 420 of IPC – Application allowed – Criminal proceedings pending before Trial Court quashed: *Kasim Ali Vs. State of M.P., I.L.R. (2016) M.P. 2624*

– Section 420 and Evidence Act (1 of 1872), Sections 45 & 73 – Opinion of expert – Cheating – Prosecution story is that the accused issued a cheque on 10.09.2004 while his account was closed on 05.07.2004 – According to the accused, he issued cheque on 10.09.2002 – The Complainant made overwriting in the date of cheque – To prove that there is overwriting, he wants to examine the Handwriting Expert, but the Courts below dismissed the application – Date of issuance of cheque goes to the very root of the matter therefore, the application allowed and hence, it was ordered that the questionable cheque be examined by the Handwriting Expert: *Satyanarayan Vs. State of M.P., I.L.R. (2016) M.P. 2830*

– Section 420, Negotiable Instruments Act (26 of 1881), Section 138 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Scope – Ingredients of Offence – In a cheque bounce matter, offence was registered by police and charges were framed by the Court against the petitioner u/S 420 & 422 IPC – Challenge to – Held – It is clear that ingredients of offence u/S 420 IPC are different from that of offence u/S 138 of the Act of 1881 and a person even if he has been convicted u/S 138 of Negotiable Instrument Act, can still be prosecuted for offence u/S 420 IPC on similar allegations – Further held – When disputed questions of facts are involved, the same cannot be adjudicated by this Court while exercising powers u/S 482 Cr.P.C. – Prima facie offence u/S 420 and 422 IPC is made out – Order framing charge is upheld – Application dismissed: *Rahul Asati Vs. State of M.P., I.L.R. (2018) M.P. *34*

– Section 420/34 – Essentials – Distinction between breach of contract and offence of cheating is very fine – It depends on the intention of the accused at the very inception which may be judged by his subsequent conduct – Mere failure to keep the promise at the subsequent stage may not be an offence u/S 420 IPC – Accused persons obtaining Rs. 50 lacs from complainant on the pretext of executing a sale deed in his favour and subsequently eloping from their residence and shutting off their mobiles clearly shows that they want to hide their whereabouts from the complainant – It cannot be said that it is a case of purely civil nature – FIR prima facie discloses the commission of cognizance offence and cannot be quashed at this stage where investigation is still in progress – Application dismissed: *Rahul Mathur Vs. State of M.P., I.L.R. (2017) M.P. *57*

– Section 420/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Offence registered against the applicants in respect of a sale transaction whereby it was alleged that applicants herein did not paid the total amount of purchase and cheated the seller – Held – Applicants are in judicial custody for almost two months and no justification has been placed either by the State or counsel for objectors as to how the continued incarceration of applicants is expedient in the interest of justice – Further held – Present case shows the elements of a Civil/Commercial

transaction, in which substantial amount has already been paid by the applicants – Bail granted – Application allowed: *T.V.S. Maheshwara Rao Vs. State of M.P., I.L.R. (2018) M.P. 1012*

– Section 420 & 120-B – See – Criminal Procedure Code, 1973, Section 482: *State of M.P. Vs. Yogendra Singh Jadon, I.L.R. (2020) M.P. 1242 (SC)*

– Section 420 & 120-B and Evidence Act (1 of 1872), Section 10 & 27 – Confessional Statement of Co-accused – Admissibility – It was alleged that accused persons took money from parents for admission in Medical College against management quota – Application against framing of charge against applicant – Held – Name of applicant not in FIR – No direct allegations against him – Confessional statement of co-accused persons recorded u/S 27 of the Evidence Act cannot be read against the applicant nor such memorandum statement can be admissible u/S 10 of the Evidence Act – For prosecution and framing of charge, mere suspicion is not sufficient, it requires grave suspicion to prosecute or put on trial a person in a criminal case – Prima facie no material on record where inference can be drawn regarding involvement of applicant in alleged crime with other co-accused persons so as to prosecute him, hence continuation of proceedings against him is not justifiable and it would amount to misuse of process of law – Applicant stands exonerated from criminal proceedings – Application allowed: *Anupam Chouksey Vs. State of M.P., I.L.R. (2017) M.P. 2016*

– Section 420 & 120-B and Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) – Scope – Held – Other officials of Bank charge-sheeted u/S 13(1)(d) & 13(2) of 1988 Act – Charge u/S 420 IPC is not an isolated offence but it has to be read along with offences under the Act of 1988 to which respondents may be liable with aid of Section 120-B IPC: *State of M.P. Vs. Yogendra Singh Jadon, I.L.R. (2020) M.P. 1242 (SC)*

– Sections 420, 177, 181, 193, 200 & 120-B – See – Criminal Procedure Code, 1973, Section 439: *Jeetendra Vs. State of M.P., I.L.R. (2020) M.P. 1530 (SC)*

– Sections 420, 465, 468, 470 r/w Section 120-B – See – Criminal Procedure Code, 1973, Section 482: *Achal Ramesh Chaurasia Vs. State of M.P., I.L.R. (2018) M.P. 2287*

– Sections 420, 467, 409 & 120-B and Companies Act (18 of 2013), Sections 439(1),(2), 436(1),(2), 441, 442, 435 & 445 – Applicability of Code – Held – There is no provision in Companies Act which ousts the applicability of the provisions of Indian Penal Code: *Manoj Shrivastava Vs. State of M.P., I.L.R. (2019) M.P. 207*

– Sections 420, 467, 468 & 471 – See – Criminal Procedure Code, 1973, Section 482: *Haji Nanhe Khan Vs. State of M.P., I.L.R. (2017) M.P. *69*

– Sections 420, 467, 468, 471 & 31 – See – Criminal Procedure Code, 1973, Sections 154, 156(3), 200, 202 & 362: *Dipti Kushwah Vs. Vijay Shankar Tiwari, I.L.R. (2018) M.P. *90*

– Sections 420, 467, 468, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 320 & 482: *Anil Kumar Vs. State of M.P., I.L.R. (2018) M.P. 1579*

– Sections 420, 467, 468, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 482: *Jai Prakash Sharma Vs. State of M.P., I.L.R. (2019) M.P. 223*

– Sections 420, 467, 468, 471 & 120-B – Veracity of Caste Certificate – Held – Once caste certificate of petitioner submitted by him in 1993 for taking admission in Engineering College has been accepted then in similar circumstances certificate which was prepared in 1998 cannot be held to be fabricated and manipulated – For non-compliance of procedure prescribed by the Apex Court, criminal proceedings initiated against petitioner quashed – Application allowed: *Sanjay Puravia Vs. State of M.P., I.L.R. (2019) M.P. 942*

– Sections 420, 467, 468, 471 r/w Section 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge-Sheet – Petitioner, a power of attorney holder of a company of Delhi purchases land at Katni on behalf of company, through local broker of Katni – Complainant/respondent No. 2, who was the real owner of land filed a complaint that his land has been sold by some person impersonating him – FIR was lodged and offence was registered against petitioner and other persons – Challenge to – Held – Petitioner has conducted the transaction and paid the consideration amount on behalf of company – Petitioner is residing at Delhi and had no knowledge about the real person who was the owner of the land – Prima facie, no material in charge-sheet to satisfy the ingredients of the said offences – Charge-sheet pending before the trial Court, so far it relates to petitioner, is quashed – Petition allowed: *Prem Singh Chouhan Vs. State of M.P., I.L.R. (2018) M.P. *33*

– Sections 420, 467, 468, 471, 120-B and Criminal Procedure Code, 1973 (2 of 1974), Amendment of 2007 – Retrospective Effect – After taking cognizance by the JMFC, the case was committed to Sessions Court – Challenge to – Held – It is settled principle of law that the statutes dealing merely with matters of procedure are presumed to be retrospective unless such construction is textually inadmissible – Further held, it is also the law that proceedings or trials completed before the change of law in procedure are not reopened for applying the new procedure – In the present case, trial was not completed and therefore committal of case to the Sessions Court in terms of amendment will not render it illegal – No illegality in the impugned order – Revision dismissed: *Laxmi Thakur (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 199*

– Sections 420, 467, 468, 471, 474 & 120-B – See – Criminal Procedure Code, 1973, Section 482: *Vishnu Shastri Vs. Deepak Suryavanshi, I.L.R. (2016) M.P. 3158*

– Sections 420, 467, 468, 471, 201 r/w 120-B – See – Criminal Procedure Code, 1973, Section 438: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

– Sections 420, 467, 469 & 475 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – No agriculturist has come forward and stated that he has been cheated by applicant – No one stated that packets found in godown were forged or applicant was in possession of counterfeit marked material – No one stated that forgery by applicant has harmed his reputation – Provision of Sections 420, 467, 469 & 475 not attracted – FIR and criminal proceedings quashed – Application allowed: *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

– Section 420 & 468 and Information Technology Act, (21 of 2000), Section 66-D – Quashment of FIR – Complainant lodged an FIR against the petitioners u/S 420 & 468 IPC and u/S 66-D of Information Technology Act – Held – Petitioners are the Managing Directors and as the company was not made an accused, the initiation and continuation of proceedings against the Managing Directors in absence of company as an accused, was not maintainable – FIR and all the proceedings are quashed – Petition allowed: *R. Shrinivasan Vs. State of M.P., I.L.R. (2017) M.P. 738*

– Sections 450, 376 & 506-II – Rape Under Threat – Injury Marks – Testimony of Prosecutrix – Appellant alongwith his friend entered the temporary shed (Jhuggi) where prosecutrix was sleeping with her 9 months old child and her husband was out of station – They took the child on point of knife and under administration of threat committed rape with prosecutrix – Conviction by Trial Court – Challenge to – Held – Rape was committed under threat, keeping the child on point of knife and in such circumstances, if there is no sign of resistance or mark of injury on the body of prosecutrix, it cannot be inferred that she was a consenting party – Prompt FIR was lodged in the present case – Testimony of prosecutrix is corroborated with statement of other prosecution witness (her neighbour) – Prosecution case proved beyond doubt – Appeal dismissed: *Kripal Singh Vs. State of M.P., I.L.R. (2018) M.P. *32*

– Sections 452, 323, 294 & 506 r/w Section 34 – See – Criminal Procedure Code, 1973, Section 482: *Atul Dubey Vs. State of M.P., I.L.R. (2018) M.P. 2568*

– Sections 456, 471 & 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – At this stage, Court should not examine the facts and evidence to determine whether there is sufficient material

which may end in conviction – Court is only concerned with allegations taken a whole whether they will constitute an offence – Material on record prima facie indicates strong suspicion of offence of conspiracy and forgery against the petitioner – Mens rea behind the offence can only be decided after marshalling of evidence – No ground for quashment of FIR or proceedings – Application dismissed: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Sections 457, 306 & 376, Protection of Children from the Sexual Offences Act (32 of 2012), Section 4, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7A and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12(3) – Age determining enquiry – Applicant – Date of incident is 15/09/2014 – Mark-sheet from 1st standard to 10th standard depicts date of birth as 05/05/1997 – Entry in admission register of school depicts date of birth as 07/04/1995 – Courts below held the date of birth as 07/04/1995 – Held – Mark–sheets of 1st standard to 10th standard produced as per Rule 12(3)(a)(i) will have precedence over any other document and in absence of it date of birth certificate from school as per Rule 12 (3)(a)(ii) will have precedence and so on – Applicant is a juvenile on date of commission of offence, being below 18 years of age – M.Cr.C accordingly disposed of: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

– Section 457 & 380 – See – Criminal Procedure Code, 1973, Sections 437, 438 & 439: *Jeetu Kushwaha Vs. State of M.P., I.L.R. (2019) M.P. *54*

– Section 460 – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2 (1): *Mithlesh Rai Vs. State of M.P., I.L.R. (2016) M.P. 667 (DB)*

– Sections 465, 471 & 120-B and Prevention of Corruption Act (49 of 1988), Section 19(1)(c) – Revision against Framing of Charge – Sanction for Prosecution – Competent Authority – Sanction granted by State Government – Applicant, employee of Municipal Council – Held – State Government being an authority superior to Municipal Council and having supervisory powers over the same including power of validating the appointments made in Council has the character of an appointing authority – State Government is competent to grant sanction for prosecution – Further held – Prima facie there are sufficient material against applicants regarding criminal conspiracy and forgery – Charges rightly framed – Revision dismissed: *Vinay Kumar Vs. State of M.P., I.L.R. (2017) M.P. 2283*

– Section 465 & 501 – See – Criminal Procedure Code, 1973, Section 199: *Pramod Kumar Vs. State of M.P., I.L.R. (2016) M.P. 2129*

– Sections 467, 468 & 471 – Held – There is no document which can be called as valuable security – Allegation is that applicant opened an account for which she signed the application form and other documents, but she signed as Pushpa Singh and not as Sadhna Singh (complainant), therefore such documents can not be called as forged or false documents – There is no document in the charge sheet which was used by applicant as original one and which was admittedly forged – No forgery was committed – Prima facie, offence u/S 467, 468 and 471 IPC are not made out – Charges framed under these sections are quashed – Revision partly allowed: *Pushpa Singh Vs. State of M.P., I.L.R. (2017) M.P. 2265*

– Section 489-B & 489-C – Essential Ingredients – Discussed and explained: *Shabbir Sheikh Vs. State of M.P., I.L.R. (2018) M.P. 1712 (DB)*

– Sections 489-B, 489-C & 120-B, Evidence Act (1 of 1872), Section 106 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Counterfeit Currency Notes – Conviction – Burden of Proof – Held – As per Section 106 of Evidence Act, burden of proof of facts especially within the knowledge of any person is upon the accused and in present case, no explanation has been offered by accused persons u/S 313 Cr.P.C. as to how they were in possession of counterfeit currency or in respect of phone calls inspite of categorical questions put to them u/S 313 Cr.P.C. – No defence has been put forth that currency was received in usual course of business – Further held – Accused hiding currency notes in shoes which shows his knowledge that notes were counterfeit – Intention to transact and knowledge can be inferred – Accused persons rightly convicted – Appeals dismissed: *Shabbir Sheikh Vs. State of M.P., I.L.R. (2018) M.P. 1712 (DB)*

– Section 494 – See – Criminal Procedure Code, 1973, Section 182(2): *Sandeep Nahta (Dr.) Vs. Smt. Deepa @ Jaya Nahta, I.L.R. (2018) M.P. *97*

SYNOPSIS : 498-A

1. Appreciation of Evidence

– Sections 498 (A), 304 (B), 302/302 r/w Section 34, 306/306 r/w Section 34, Dowry Prohibition Act (28 of 1961), Section 4 and Criminal Procedure Code,

1973 (2 of 1974), Section 378 (3) – Dowry Death/Murder/Abetment to commit suicide – Facts – Deceased was married in the year 2010 – Accused grand father & grand mother – Allegations – Cruelty – Demand of dowry – Ousted from house – After two years, deceased alongwith her husband was called back by the grand parents – Again demand of dowry – Deceased, daughter-in-law burnt herself – No one was present in the house – Hospitalisation – Dying declaration – Trial Court acquitted – Appeal against acquittal – Leave to appeal – Held – None present at the time of incident in the house nor any previous complaint of cruelty was there before the incident nor the deceased has stated in her dying declaration that she was subjected to cruelty or was set fire by the accused/non-applicants or has herself set fire – She has specifically stated in her dying declaration that while putting off the pulse from furnace, her saree caught fire – So the death of deceased was neither homicidal nor suicidal, but it was accidental – Application for leave to appeal against acquittal dismissed – Judgment of Trial Court upheld: *State of M.P. Vs. Komal Prasad Vishwakarma, I.L.R. (2016) M.P. 3199 (DB)*

– Sections 498-A, 304-B/302 & 306, Dowry Prohibition Act (28 of 1961), Section 3 & 4, Criminal Procedure Code, 1973 (2 of 1974), Section 378 (3) and Evidence Act (1 of 1872), Section 113-B – Presumption – Application for leave to appeal against acquittal – Death due to strangulation within 7 years of marriage – Trial court found that prosecution could not establish cruelty in relation to demand of dowry soon before death – Sister-in-law of deceased deposing that only issue of quarrel was regarding leaving of in-laws house by deceased without permission – In the police report submitted by deceased, there was no allegations regarding dowry demand and torture – No ocular or medical evidence to establish that non-applicants have murdered or abetted her to commit suicide – Held – There is no illegality or perversity in the impugned order and no ground to interfere with the order of acquittal – Application for leave to appeal dismissed: *Gourishankar Nema Vs. Prabhudayal Nema, I.L.R. (2017) M.P. 765 (DB)*

– Section 498-A & 306 – Wife of applicant committed suicide – Father of the deceased stated in his Marg Statement and statement u/S 161 of Cr.P.C. that applicant used to beat and quarrel with the deceased for demand of dowry – Held – From the statement of the parents of the deceased, there is no act of instigation to commit suicide on behalf of the applicant, so prima facie, no case made out for offence u/S 306 of I.P.C. – Charge u/S 306 of I.P.C. quashed – So far as the charge u/S 498-A of I.P.C. is concerned, sufficient prima facie evidence available in statement of father of deceased – Trial Court directed to proceed against the applicant for remaining charge u/S 498-A of I.P.C. – Revision partly allowed: *Vinod Singh Bhagel Vs. State of M.P., I.L.R. (2016) M.P. 2067*

2. Continuing Offence

– Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178 – Continuing Offence in relation to territorial jurisdiction and in relation to limitation to taking cognizance – Discussed and explained: *Dushyant Singh Gaharwar Vs. State of M.P., I.L.R. (2017) M.P. *135*

3. Cruelty/Ingredients & Scope

– Section 498-A – Cruelty – Cruelty u/S 498-A has two fold meaning, physical torture and mental injury – Mental injury would be more subtle than physical torture – When statement contains mental cruelty then quashment is not warranted: *Meena Sharma (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2385*

– Section 498-A – Cruelty – Ingredients & Scope – Held – Sporadic incidents of ill treatment by husband or his relatives do not attract definition of cruelty as these were aimed at pressuring wife for divorce and not for dowry demands – Every type of harassment or cruelty does not attract Section 498-A IPC – There may be cases where wife is of low tolerance to usual domestic quarrel – Cruelty is a relative term and is difficult to straitjacket it by means of definition – What constitutes cruelty for one may not be constitute cruelty for another person: *Mohd. Shafeeq Vs. State of M.P., I.L.R. (2019) M.P. 2605*

– Section 498-A – Dowry Demands – Cruelty – Appreciation of Evidence – Held – Prosecution witnesses established beyond reasonable doubt that deceased was used to be harassed, threatened and assaulted in relation to not fulfilling the demand of television and motorcycle – Appellants rightly convicted for offence u/S 498-A IPC – Word "Cruelty" discussed – Appeal partly allowed: *Surendra Singh Vs. State of M.P., I.L.R. (2018) M.P. 2263*

4. Defence

– Section 498-A – When the offence is alleged to have taken place, Non-applicant No. 2 was wedded wife of Applicant No. 1 – Therefore, he cannot now be heard to say that after divorce, no case is made out against him: *Ankit Neema Vs. State of M.P., I.L.R. (2016) M.P. 3174*

5. Investigation

– Section 498-A – Reconciliation proceeding – Husband of the complainant submitted a written complaint in which he has already expressed his apprehension about the conduct of his wife – It is the duty of the investigation officer to objectively consider the factum of reconciliation proceeding if any going on between the parties

as well as the apprehension of husband and/ or his relatives reflected through some complaint made to police authorities: *Saurabh Tripathi Vs. State of M.P., I.L.R. (2017) M.P. 1000*

6. Quashment - FIR/Proceedings

– Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of charges – Allegation of mis-behaviour against applicant – Applicant is brother of complainant's husband – Applicant not living in the matrimonial home of complainant and is living outside Sagar, presently at Satna – Prior to that he was in Bombay – Held – No overt act has been assigned against applicant in statement recorded u/s 161 of Cr.P.C. – Accordingly, application allowed, criminal proceedings against the applicant are quashed: *Jaspal Singh Sodhi Vs. State of M.P., I.L.R. (2016) M.P. 1239*

– Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Quashment of FIR – Scope – Held – Apex Court concluded that in case of matrimonial matters, it becomes the duty of the Court to encourage genuine settlement of matrimonial dispute – For purpose of securing the ends of justice, if quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to exercise the power of quashing: *Durga Bai Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 2391*

– Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Quashment of FIR – Compromise – FIR lodged after death of husband against his mother, brother and sister – Held – Because the husband has expired and matter has been compromised between parties voluntarily where parties wants to settle their dispute and to live peacefully – FIR and proceedings quashed – Application allowed: *Durga Bai Ahirwar Vs. State of M.P., I.L.R. (2019) M.P. 2391*

– Section 498-A/34 – Quashment of FIR and Criminal Proceedings – Ground of Counter blast – Husband submitted that he filed application for restitution of conjugal rights and after service of notice to wife she lodged the FIR by way of counter blast – Held – FIR cannot be quashed simply because it was lodged after filing of an application by husband for restitution of conjugal rights: *Navneet Jain (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2560*

– Sections 498-A, 304-B & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Criminal Proceedings – Held – Wife committed suicide after 7 yrs. of marriage – Statements of brother-in-law and real brother of deceased do not specify any specific instances except for bald statement against entire family of husband including 87 yrs. old grandmother – In suicide note, there is no whisper of any kind of cruelty nor any kind of demand of dowry by applicants – Statements recorded after 4 months of incident, also do not establish prima facie

commission of offence – FIR and criminal proceedings quashed – Application allowed: *Manorama Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 674*

– Section 498-A & 323/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Separate Living – Offence registered against applicant and parents-in-law u/S 498-A and 323 IPC – Challenge to – Held – Applicant submitted that he is residing 30 kms away from matrimonial house of respondent No. 2 and thus it cannot be said that he could have interfered with day to day family affairs of respondent No. 2 – Separate living would not include a separate house either in same vicinity or at nearby place, it would mean where person is not in a position to interfere with day to day family affairs of complainant – There is specific allegation against applicant – FIR cannot be quashed – Application dismissed: *Dalveer Singh Vs. State of M.P., I.L.R. (2018) M.P. *62*

– Sections 498-A, 506 & 34, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Held – Complaint by wife against father, mother, brother and sister of husband, who are living separately from husband and wife – There is general allegations found against them – Prima facie material available only against husband – Proceedings against other family members quashed – Application partly allowed: *Shiv Prasad Tiwari Vs. State of M.P., I.L.R. (2020) M.P. 740*

– Section 498-A & 506/34, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Grounds – Held – Petitioners are brother-in-law and married sister-in-law living separately from complainant – Except casual allegation, complainant has not specifically stated against petitioners mentioning year, month, date or time of their cruel behaviour – FIR quashed – Application allowed: *Mohd. Shafeeq Vs. State of M.P., I.L.R. (2019) M.P. 2605*

– Section 498-A & 506 r/w Section 34 – See – Criminal Procedure Code, 1973, Section 482: *Mohit Jain Vs. State of M.P., I.L.R. (2017) M.P. *97*

– Section 498-A – See – Criminal Procedure Code, 1973, Section 320 & 482: *Ramakant Vs. State of M.P., I.L.R. (2017) M.P. 3130*

– Section 498-A/34 – See – Criminal Procedure Code, 1973, Section 482: *Rajesh Kumar Gupta Vs. State of M.P., I.L.R. (2017) M.P. 989*

– Sections 498-A, 323 & 506/34 – See – Criminal Procedure Code, 1973, Section 482: *Saurabh Tripathi Vs. State of M.P., I.L.R. (2017) M.P. 1000*

– Sections 498-A, 323, 506 r/w Section 34 – See – Criminal Procedure Code, 1973, Section 482: *Meena Sharma (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 2385*

– Section 498-A & 324 – See – Criminal Procedure Code, 1973, Sections 482 & 320: *Balendra Shekhar Mishra Vs. State of M.P., I.L.R. (2016) M.P. 583*

7. Shared Household/Female Relative

– Section 498-A & 506/34, Dowry Prohibition Act (28 of 1961), Section 4 and Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(F), 2(S), 3 & 12 – Issuance of notice to the petitioner – Female relatives – Registering the complaint against petitioner – Shared household – Respondent wife is living separately with her parents for quite sometime – Petitioner may be a female relative of the respondent but it cannot be said that she was a member of shared household – Petitioner married sister-in-law of respondent wife is living her life separately with her husband – She cannot be included in the term to be "a relative" – Since allowing the prosecution is likely to cause a rift in the matrimonial life and happiness of the petitioner which is totally uncalled for – Therefore, domestic violence case against petitioner is quashed: *Preeti Vs. Neha, I.L.R. (2016) M.P. 2132*

8. Territorial Jurisdiction

– Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178 – Territorial Jurisdiction – Held – As per the FIR and statements of complainant's witnesses u/S 161 Cr.P.C., all the instances of alleged cruelty regarding dowry demands were committed in district Shahdol in matrimonial home – None stated that any instance took place at wife's parental home at district Satna – Case triable at Shahdol and not in district Satna – Impugned order set aside – Revision allowed: *Dushyant Singh Gaharwar Vs. State of M.P., I.L.R. (2017) M.P. *135*

– Sections 498-A, 506 & 34 and Dowry Prohibition Act (28 of 1961), Section 3/4 – Territorial Jurisdiction – Held – Apex Court concluded that a women drove out of her matrimonial home can file a criminal case against her spouse and in-laws at a place where she took shelter – Husband wife were living at Mumbai – After disputes, wife living with her parents at Bhopal – Bhopal Court has jurisdiction to try the matter: *Shiv Prasad Tiwari Vs. State of M.P., I.L.R. (2020) M.P. 740*

– Section 498-A/34 & 406 – See – Criminal Procedure Code, 1973, Section 177 & 178: *Anurag Mathur Vs. State of M.P., I.L.R. (2017) M.P. 2031*

9. Miscellaneous

– Section 498-A – See – Criminal Procedure Code, 1973, Section 438: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– Section 498-A – See – Dowry Prohibition Act, 1961, Section 2 & 4: *Ruchi Gupta (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *44*

– Section 498A r/w 34 – See – Criminal Procedure Code, 1973, Section 397 & 401: *Abhilasha Vs. Ashok Dongre, I.L.R. (2016) M.P. 266*

– Sections 498-A, 376, 506(B) & 34 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12: *Miss A Vs. State of M.P., I.L.R. (2019) M.P. 662*

– Section 498-A & 406 – See – Passports Act, 1967, Section 10(3)(e) & 10(5): *Navin Kumar Sonkar Vs. Union of India, I.L.R. (2018) M.P. 677*

• **– Section 499 & 500** – Defamation – Kinds – Held – The wrong of defamation is of two kinds namely, "libel" and "slander" – In "libel" defamatory statement is made in some permanent and visible form such as printing, pictures or effigies and in "slander" it is made in spoken words or in some other transitory form, whether visible or audible: *Richa Gupta (Smt.) Vs. Gajanand Agrawal, I.L.R. (2018) M.P. 1003*

– Section 499 & 500 – See – Criminal Procedure Code, 1973, Section 199(2): *K.K. Mishra Vs. State of M.P., I.L.R. (2017) M.P. 2269 (DB)*

– Section 499 & 500 – See – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 2(n) & 3(2): *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Section 499 & 500 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceeding – Husband filed criminal complaint against wife u/S 500 IPC whereby cognizance was taken by Court – Husband submitted that wife has alleged that he is earning Rs. 6 lacs as gratification by wrongly opening the tender and also remained in jail for 3 days, and such false allegations being defamatory, complaint has been made – Wife submitted that she filed cases against husband u/S 498-A IPC, u/S 125 Cr.P.C. and u/S 12 Domestic Violence Act, 2005 and to counter above cases, husband filed the present criminal case against her – Held – Allegations made in the written complaint are defamatory or not, has to be seen after production of evidence by wife in respect of her allegations – Proceedings cannot be quashed at this stage – Petition dismissed: *Richa Gupta (Smt.) Vs. Gajanand Agrawal, I.L.R. (2018) M.P. 1003*

– Section 499 & 500 and Criminal Procedure Code, 1973 (2 of 1974), Section 199(2) & 199(4) – Defamation – Sanction/Permission for prosecution – Nexus of Allegation – Defamatory statements against Chief Minister in press conference by appellant – Held – Statements such as "appointment of persons from area/place to which the wife of Chief Minister belongs" and "making of phone calls by relatives of Chief Minister" have no reasonable nexus with discharge of public duties by or the

office of Chief Minister – Statements may be defamatory but in absence of nexus between the same and discharge of public duties of office, remedy u/S 199(2) and 199(4) Cr.P.C. is not be available – Complaint proceedings untenable in law and is quashed – Appeal allowed: *K.K. Mishra Vs. State of M.P., I.L.R. (2018) M.P. 2083 (SC)*

– Section 499 (Exception 4) & 500 – Defamation – Newspaper Publication of Court Proceedings – Held – A report which substantially deals with contentions of both the parties and if author and newspaper records its own opinion about the controversy can, in no manner be held to be punishable u/S 499 IPC but it is not at all permitted to publish a report which only refers to a version of one side and completely omits the defence of the other side – Inaccurate and selective reporting of Court proceedings are not protected by virtue of Exception 4 to Section 499 IPC and if such reporting are permitted, Courts will be undermining the rights of other party which is to lead life with dignity – Photograph of applicant was also published alongwith one sided narration which amounts to defamation – Conduct of respondent cannot be given benefit of Exception 4 to Section 499 IPC – Impugned order set aside – Magistrate directed to reconsider the case – Application allowed: *M.P. Mansinghka Vs. Dainik Pratah Kaal, I.L.R. (2018) M.P. 821*

– Section 499 Explanation 4 & 500 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Defamation – Quashment of Charge – Respondent No. 1, an advocate by profession filed Criminal complaint against applicant, who is an Executive Engineer in Electricity Department – Charge u/S 500 I.P.C. was framed against applicant – Challenge to – Held – Witness has not stated that after hearing the alleged words uttered by applicant, reputation of respondent No.1 was harmed in his estimation – Prima facie does not fulfill the requirement of Section 499, Explanation 4 I.P.C. – Further held – Brother of respondent No. 1 facing criminal prosecution for theft of electricity – Complaint filed maliciously with ulterior motive of wreaking vengeance on applicant and to deter him from discharging his official duties – Forcing officials to face criminal prosecution for performing their duties would demoralize them – It would be against the society at large and would not be in the interest of justice – Impugned order set aside – Complaint filed against applicant is dismissed – Application allowed: *A.K. Hade Vs. Shailendra Singh Yadav, I.L.R. (2018) M.P. 1807*

– Section 504 – Conviction u/S 504 – In absence of the charge, the appellant could not be convicted of that offence: *Gabbar Singh Vs. State of M.P., I.L.R. (2016) M.P. 3091 (DB)*

PENSION RULES, M.P., 1976

– Rule 65 – See – Service Law: *Chandramani Prasad Mishra Vs. State of M.P., I.L.R. (2018) M.P. *41*

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995 (1 OF 1996)

– Entitlement for Reservation – Petitioner, a physically challenged person with 50% locomotor disability claiming his entitlement of promotion as per the Act of 1995 and as per the reservation granted under the government circulars/memorandums – Held – perusal of various office memorandums issued from time to time goes to show that in an establishment, employer is under an obligation to reserve 3% post for the persons with disability in respect of Group–A, B, C, and D – Computation of reservation has to be done in an identical manner i.e. computing 3% reservation on total number of vacancies in the cadre strength – In the present case, in the respondent Insurance Company, there is no such reservation in respect of Group A and B category – Respondents directed to reserve vacancies keeping in view the Act of 1995 and instructions issued by Government of India – Respondents shall also consider the issue of promotion with respect to petitioner in respect of reserve vacancy – Writ Petition allowed: *Sushil Kanojia Vs. The Oriental Insurance Co. Ltd., I.L.R. (2018) M.P. 426*

– Section 2(k) – Definition of 'establishment' – Term 'establishment' covers a corporation under the Central, Provincial or State Act and also includes an authority or a body owned or controlled by the government or local authority – It also includes a 'Company' as defined u/S 617 of Companies Act, 1956 and all the government departments of India – In the instant case, the respondent no.1 company is an establishment as defined under the Act of 1995: *Sushil Kanojia Vs. The Oriental Insurance Co. Ltd., I.L.R. (2018) M.P. 426*

– Section 2(t) – See – Service Law: *Raj Kumar Roniya Vs. Union of India, I.L.R. (2016) M.P. *42*

– Sections 32, 33 & 36 – Appointment of hearing Impaired Candidates – Posts of Samvida Shala Shikshak Grade-II and III in Panchayat & Social welfare department & Urban Administration & Development Department – Advertisement issued by M.P. Professional Examination Board does not reflect reservation for hearing Impaired persons – State Government notification dated 24.03.2006 provided 6% reservation for disabled persons in which 2% reserved for hearing Impaired persons – Subsequent notification dated 2.12.2011 includes School Education department of Urban Administration to appoint disabled persons on post of Assistant Teachers – Held – No question of depriving legitimate right guaranteed under the Act only because of omission in the advertisement: *State of M.P. Vs. Gajraj Singh, I.L.R. (2016) M.P. 349 (DB)*

– Section 47 and Indian Railway Medical Manual (IRMM), Volume 1, 2000 (III Edition), Para 504, 532(i) & 539(a) – Promotion – Colour Blindness – Respondent, who qualified in written test conducted through Limited Departmental Competitive Examination (LDCE) for selection for the post of Assistant Commercial Manager (Group 'B' Post), was rejected on the ground that he was suffering from colour blindness – He filed application before the Central Administrative Tribunal whereby his application was allowed and petitioners were directed to convene a review viva-voce to consider the case of respondent against 30% quota, irrespective of his visual standards (colour blindness) – Challenge to – Held – Duties of ACM includes matter related to coach goods and claims etc and further looking to the organizational chart, it is clear that Group 'B' post of Assistant Commercial Manager is a commercial post and is not a technical/safety post and therefore rejection for promotion of petitioner to the post of ACM on the ground of colour blindness is bad in law – No error committed by the Tribunal – Petition dismissed with cost of Rs. 5000: *General Manager, Union of India Vs. Moses Benjamin, I.L.R. (2017) M.P. 1110 (DB)*

– Section 61 – Power of Commissioner – Under the Act, Commissioner is empowered to take up the matter for implementation of law, with regard to welfare and protection of rights of persons with disabilities under the Land Acquisition Act and Rehabilitation Policy – He is not empowered to direct for employment of anyone of the respondents, thus the order passed by Commissioner is without jurisdiction: *Hindalco Industries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 1799 (DB)*

PETROLEUM RULES, 2002

– Rule 143 – Any person who wants to obtain license under these rules shall have to submit an application in writing to the authority empowered to grant such license: *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

– Rule 144 – Where the licensing authority is the Chief Controller of Explosives defined under Rule 2 and as per Rule 144, the applicant for a new license other than a license in Form III, XI, XVII, XVIII or XIX shall have to apply to District Authority for grant of NOC to the applicant – The procedure for grant of NOC is also prescribed under the said Rules: *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

– Rule 154 – An appeal shall lie against any order refusing to grant, amend or renew a license cancelling or suspending a license to the authorities provided under sub-rule (1): *Indore Development Authority Vs. Ashok Dhawan, I.L.R. (2016) M.P. 1251 (DB)*

PLASTIC WASTE MANAGEMENT RULES, 2016

– Rule 4(c) & (d) – See – Constitution – Articles 213(1), 254, 304(b): *Popular Plastic (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. *93 (DB)*

– See – Constitution – Article 226: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

PLEADING AND PROOF

– Election Petition – At the time of scrutiny, no objection was taken to the effect that returned candidate was not qualified to contest election as he was not a voter of any assembly constituency and returned candidate was ineligible to participate in the election having not furnished the electoral roll /certified copy of the constituency in which he was a voter – There was no pleading to the effect that the appellant was not a voter of any assembly constituency and therefore he was not qualified – Held – Trial of an election petition has to be in accordance with the provisions of the Civil Procedure Code 1908 – When no pleadings were made that election of the returned candidate was void on the grounds mentioned u/S 100(1)(a) and no issue on the same was struck and no opportunity was availed to returned candidate to adduce relevant evidence, High Court could not have found that election of returned candidate was void u/S 100(1)(a) – Finding of the High Court that the election petitioner had made out a case for declaration that the election of returned candidate was void u/S 100(1)(a) cannot be upheld – Appeal allowed – Election of appellant/ returned candidate declared valid in law: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

POLICE REGULATIONS, M.P.

– Regulation 53 (c) – Requirement – Candidate to have good moral character and antecedents – Considering the nature of discipline and standard which is required to be maintained in the police force, decision of respondents cannot be faulted: *Sheru Khan Vs. State of M.P., I.L.R. (2016) M.P. *45*

– Regulation 213 & 270(4) – See – Service Law: *Ashish Singh Pawar Vs. State of M.P., I.L.R. (2017) M.P. 2124*

– Regulation 226 & 228 – See – Service Law: *Rudrapal Singh Chandel Vs. State of M.P., I.L.R. (2017) M.P. 2333*

– Regulation 270 – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14: *Santosh Bharti Vs. State of M.P., I.L.R. (2016) M.P. 3282*

– Regulation 742(c) – Mode of Recording Dying Declaration – Procedure – Discussed: *Kadwa Vs. State of M.P., I.L.R. (2018) M.P. *63 (DB)*

POST-GRADUATE MEDICAL EDUCATION REGULATIONS, 2000

– Admission – Post Graduate Course – Private Medical Colleges – 50% of the students pursuant to examination conducted by the applicant association and 50% of the students to be given admission as per the recommendation of the State: *Modern Dental College & Research Center Vs. State of M.P., I.L.R. (2016) M.P. 3211 (SC)*

– Admission – Private Medical Colleges – Post Graduate Course – Applicants permitted to select candidates on the basis of their inter-se merit for the session 2016-17 batch from the list of successful candidates: *Modern Dental College & Research Center Vs. State of M.P., I.L.R. (2016) M.P. 3211 (SC)*

– Regulations 9(iv) & 9(vii), M.P. Government Autonomous Medical and Dental Post Graduate Course (Degree/Diploma) Admission Rules, 2017, Rule 2(vii) and Constitution – Article 14 – Definition – Amendment – Constitutional Validity – In-service Doctors – Reservation and additional/incentive marks for serving in rural and notified areas – Held – Vide amendment government deleted provision for granting benefit to rural services alone and have restricted the same to services rendered in difficult and/or remote areas – Such amended definition is declared ultra vires, unconstitutional and is violative of Article 14 of Constitution – Rule 2(vii) of Rules of 2017 quashed – Writ petition allowed to such extent: *Brijesh Yadav (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *124 (DB)*

POWERS-OF-ATTORNEY ACT (7 OF 1882)

– Section 1A – See – Civil Procedure Code, 1908, Order 3 Rule 1: *Vinita Shukla (Smt.) Vs. Kamta Prasad, I.L.R. (2020) M.P. 447*

PRACTICE AND PROCEDURE

– Adjournments – Duty of Advocate – Held – Bar should not create hurdles in justice dispensation system by unnecessary seeking adjournments – Seeking adjournments for no reasons amounts to professional misconduct – Advocates are not mouthpiece of their clients for purpose of delaying Court proceedings nor they should avoid hearing but being officers of Court, they have sacrosanct duty towards Court: *Nandu @ Gandharva Singh Vs. Ratiram Yadav, I.L.R. (2019) M.P. *41*

– Advocate – Held – Advocate is an agent of the party, his acts and statements should always be within the limits of the authority given to him – Whenever a counsel wants to appear as a witness for his client, he must withdraw his Vakalatnama and

then appear as a witness, not as an Advocate registered under the Advocate Act: *Ramwati (Smt.) Vs. Premnarayan, I.L.R. (2020) M.P. *12*

– Appeal – An appeal is the "right of entering a superior court and invoking its aid and interposition to redress an error of the Court below" and though procedure does surround an appeal the central idea is the right – The right is a statutory right and it can be circumscribed by the conditions of the statute granting it – It is not a natural or inherent right and cannot be assumed to exist unless provided by the statute: *J.B. Mangaram Mazdoor Sangh Vs. J.B. Mangaram Karamchari Union, I.L.R. (2016) M.P. 1958*

– Application for intervention – Held – In the instant appeal, Trust filed an application to intervene on the ground that as a changed circumstances, trust has now been registered – Held – Order of Registrar was held to be void and illegal and this issue has already been decided in favour of appellant on the ground that Trust was already revoked by the deed executed by Birdi Bai during her lifetime and such revocation was upheld by this Court in F.A. No. 22/1997 – Hence, Trust is not in existence and thus there is no change in circumstances, trust is not allowed to intervene in this appeal – Application dismissed: *Manjula Bai Vs. Premchand, I.L.R. (2017) M.P. 1119*

– Barred by limitation & barred by laches – Distinction – When an action is barred due to limitation, the same is on account of operation of statute mainly the Limitation Act, 1963 – Party is prevented from seeking relief for not having sought judicial redress within specific period stipulated under Limitation Act, Special Statute & rules of the High Courts and Supreme Court within which the litigant may approach for relief – Whereas, action is barred by laches because of inordinate delay though not provided under any statute, causing prejudice to another – Laches is the denial of judicial redress based on principle of equity: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Binding Precedent – Held - Judgment of other High Courts are not binding although they have persuasive value and therefore the same are required to be dealt with: *Manoj Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 240*

– Civil – A person who approaches the Court must come out with clean hands – A litigant who approaches the court is bound to produce all the documents executed by him which are relevant to the litigation: *Bank of Maharashtra Vs. M/s. ICO Jax India Deedwana Oli Lashkar Gwalior, I.L.R. (2017) M.P. 645*

– Conflicting Judgments – Held – Even if there is conflict between the two judgments of the Supreme Court by the equal strength, even then the earlier view would be binding precedent and will prevail if the earlier judgment was not brought to

the notice of the Court in a later judgment: *Ashutosh Pawar Vs. High Court of M.P., I.L.R. (2018) M.P. 627 (FB)*

– Consideration of Issues – Duty of Court to deal with all the issues and evidence lead by the parties before recording findings – In the instant case, High Court only considered issue of limitation – Other issues not considered – Impermissible – Court ought to have considered all the issues – Appeal allowed – Matter remanded to High Court to decide remaining issues on merits: *Madina Begum Vs. Shiv Murti Prasad Pandey, I.L.R. (2017) M.P. 507 (SC)*

– Consolidation of Suits – Petitioner filed application before trial Court for consolidation of three civil suits pending in respect of the same property – Application dismissed – Challenge to – Held – All three suits are at different stages of proceedings and even the relief of three suits is different from each other – One of the said suits has already been dismissed and its restoration application is still pending and in these circumstances it is rather preposterous for the petitioner even to think for consolidation of the three suits – Consolidation of the suits would result in slow down the proceedings of suits which are at advance stage to keep up the pace with the suits which are at their preliminary stage – Further held – All the three suits were filed in the year 1995, 1996 and 1997 but application for consolidation was filed in 2015 and before aforesaid application u/S 151 CPC, there was no effort by petitioner to consolidate the suits – Trial Court rightly dismissed the application – Petitions dismissed: *Raj Narayan Singh Vs. M/s. Pushpa Food Processing Pvt. Ltd., I.L.R. (2018) M.P. 878*

– Consolidation of Suits – Provision and Purpose – Held – Though the consolidation of suits is not specifically provided in Civil Procedure Code as applicable to the State of M.P, it may be achieved by invoking Section 151 of CPC – Basic purpose for directing consolidation of suits is to firstly avoid conflicting judgments and secondly to save valuable time, energy and money by clubbing the cases together, involving common questions: *Udayraj Vs. Dinesh Chandra Bansal, I.L.R. (2017) M.P. 1116*

– Counsel – Held – Where litigant is represented by Counsel, it is the duty of Counsel also to ensure that litigant maintains the decorum in Court – If litigants creates nuisance without knowledge and permission of Counsel, the counsel must discharge himself from the case, otherwise it can be presumed that such nuisance is being created after due permission from counsel: *Ashish Wadhwa Vs. Smt. Nidhi Wadhwa, I.L.R. (2020) M.P. *13*

– Courts & Litigants – Held – No litigant can choose or say to a Judge that who should be on Bench to decide a case on a particular issue – Litigant must maintain decorum and is not allowed to pressurize Presiding Judge by creating nuisance in

Court and if it is done, the Presiding Judge, instead of rescuing himself must tackle the situation with all firmness – He can also initiate proceedings for Contempt of Court: *Ashish Wadhwa Vs. Smt. Nidhi Wadhwa, I.L.R. (2020) M.P. *13*

– Criminal – Procedure when magistrate does not order investigation u/S 156(3) but takes cognizance instead – Held – Where a magistrate does not think it proper to pass an order u/S 156(3) Cr.P.C., then he can take cognizance and follow the procedure provided in chapter 15 of Cr.P.C. and if after recording of statement of complainant witnesses the magistrate proposes to seek help from the police, then he can direct inquiry u/S 202(1) Cr.P.C: *Narottam Pathak Vs. State of M.P., I.L.R. (2017) M.P. 762*

– Criminal Procedure Code, 1973 (2 of 1974) – Section 193 & 194 – Jurisdiction – Irregularity/Procedural Lapse – Offence u/S 342, 354 and 377 IPC was registered – Case, after committal was tried by Additional Sessions Judge – On the date of judgment, matter was returned back to Sessions Judge on the ground that Court of Additional Sessions Judge is not the designated Court under the Act of 2005 – Case was further remanded to the Magistrate for re-committal – Held – Once cognizance has been taken by Sessions Judge there is no need to send back the case to Magistrate for recalling his earlier order of committal and ask him to recommit – Since Additional Sessions Judge is competent to exercise jurisdiction of Sessions Court, therefore he is competent to try a case made over for consideration even though it is triable by some designated Court – In such a situation, trial by Additional Sessions Judge is not illegal but could be an irregularity or error which may attract Section 465 CrPC – Further held – Additional Sessions Judge retransmitted the case to Sessions Judge then, being the designated Court, the Sessions Judge could have tried the matter instead of remanding back the case for recommittal – Trial will not be vitiated by a mere irregularity or error unless it is shown that there is a failure of justice on account of said irregularity or error – No need for de-novo trial: *In Reference Vs. Jitendra, I.L.R. (2017) M.P. 1223*

– Criminal Trial – Marking Exhibit on Document – Effect – Revision against refusal by trial Court in granting permission to mark exhibit on the document produced by the handwriting expert during his evidence – Held – Applicant facing trial u/S 307/ 149, 147, 148 & 506 IPC - Handwriting expert took into consideration certain documents for natural handwriting of the applicant – State as well as applicant has a right to examine and cross-examine the expert on these documents – Merely by putting exhibit marks on the documents would not mean that these documents would be read in evidence – Documents are to be proved as per the Evidence Act and till they are not proved they cannot be read in evidence – Burden is on applicant to prove the documents but at this stage putting exhibit marks on documents will not harm the opposite party – Additional Sessions Judge erred in disallowing the applicant to mark exhibit on

documents – Impugned order set aside – Documents used by handwriting expert are allowed to be marked exhibit in the case – Revision allowed: *Sunil Vs. State of M.P., I.L.R. (2017) M.P. 1234*

– Criminal Trial – Reducing to the sentence already undergone – Effect – Held – Undue sympathy leading to imposition of inadequate sentence would do more harm to justice system and would undermine public confidence in efficacy of law: *Chhanga @ Manoj Vs. State of M.P., I.L.R. (2017) M.P. 1795 (SC)*

– Criminal Trial – Testimony of Police Officer & Newspaper Publication – Evidentiary Value – Held – Testimony of Police Officer cannot be thrown overboard only on the ground that he is a police officer – If testimony of police officer, on due appreciation is found to be trustworthy and free from material contradictions and anomalies, nothing prevents in law in recording conviction of the basis of such evidence – Publication of news item in newspaper carries no evidentiary value in absence of testimony of reporter, news correspondent or editor of the newspaper: *Mohd. Nayan Choudhary Vs. State of M.P., I.L.R. (2017) M.P. 1191 (DB)*

– Date of Hearings – Discretion of Court – Held – Presiding Officer is the guardian of judicial time and has complete discretion to fix dates of hearing/proceedings: *Aarti Sahu (Smt.) Vs. Ankit Sahu, I.L.R. (2020) M.P. 2171*

– Defects of Jurisdiction – Held – A defect of jurisdiction whether pecuniary or territorial or whether it is in respect of the subject matter of action, strikes at the very authority of Court to pass any decree – Such defect cannot be cured even by consent of parties: *Venishankar Vs. Smt. Siyarani, I.L.R. (2020) M.P. 1144*

– Delayed Payment of Salary – Interest thereon – Entitlement – Grounds – Held – If a person is deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, by way of interest: *State of M.P. Vs. Ramlal Mahobia, I.L.R. (2018) M.P. 2813 (DB)*

– Evidence of Hostile Witness – Delay in recording case diary statements – Credibility – Held – Evidence of hostile witnesses can be relied upon to the extent to which it supports the prosecution version – In the present case, PW-2 (hostile witness) supported the prosecution case consistently in his examination in chief but on the next day, during cross-examination, he resiled from his previous statement with regard to identity of accused persons, however his evidence establishes the prosecution case with regard to time, place, manner and weapon of the offence – Further held – Victims were resident of Seoni malwa, after the incident, injured were referred to district hospital Hoshangabad, where after two days, one of injured succumbed to injuries – Statements were recorded after they came back from Hoshangabad – Under these circumstances, delay in recording case diary statements

would not after the credibility of the prosecution case: *Karun @ Rahman Vs. State of M.P., I.L.R. (2018) M.P. 542 (DB)*

– Industrial Dispute – Unfair Labour Practice – Held – Workers who had already received money from employer by way of settlement and now objecting the payments due to members of petitioner union and other co-workers, is Unfair Labour Practice: *Bhartiya Drugs and Chemicals Shramik Karmchari Parishad Vs. State of M.P., I.L.R. (2018) M.P. 2737*

– Initial Inquiry – Show Cause Notice – Opportunity of Hearing – Held – Opportunity of hearing was not required to be given at the initial stage of inquiry because it was not adversely affecting the petitioner in any manner: *Satyaprakashi Parsedia (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2722*

– Interpretation of Statutes – Scope – Held – Court can interpret the provision of statute but cannot legislate it by judgments or orders: *Neeta Soni Vs. State of M.P., I.L.R. (2019) M.P. 1939 (DB)*

– Issuance of Notice – By Investigating Agency to prospective accused requiring to appear before Trial Court on the date of filing of charge sheet – No such provision in the Code of Criminal Procedure: *Rajendra Kori Vs. State of M.P., I.L.R. (2016) M.P. 3422*

– Jurisdiction of Court – Similar matter pending at the Principal Bench – Held – Court is not bound to await decision by a coordinate bench at the Principal Seat in matter of similar nature – For sake of maintaining judicial discipline, question of awaiting decision would only arise when the said similar matter is pending before a higher Court and not before a court of coordinate jurisdiction: *Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India, I.L.R. (2017) M.P. 1379 (DB)*

– Laches – Party seeking to prevent an action on the ground of laches must establish the crystalisation of his right by efflux of time which would be prejudiced if the action of other party is entertained by the Court – Delay simpliciter would not be adequate to invoke laches: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Legal Maxim – Vigilantibus, et non dormientibus, jura sub veniunt – Meaning – The law shall aid the vigilant and not the indolent: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– New Facts/Grounds – Held – At this stage, correctness of order of Revenue Authority cannot be tested on basis of facts which were not considered by authorities as not placed before them: *Venishankar Vs. Smt. Siyarani, I.L.R. (2020) M.P. 1144*

– Oral Evidence – Credibility – Held – There is no general inflexible rule of law or practice which permits total rejection of oral evidence which is otherwise admissible under Evidence Act – Court should look for contemporaneous documentary evidence or sure circumstances – Such oral evidence must be closely scrutinized with utmost care and caution to see whether it spring from partisan sources: *Abhay Singh Vs. Rakesh Singh @ Ghanshyam Singh, I.L.R. (2018) M.P. 1940*

– Order Sheets – Held – Order sheets are sacrosanct documents and facts mentioned therein should be treated as *prima facie* true: *Ashish Wadhwa Vs. Smt. Nidhi Wadhwa, I.L.R. (2020) M.P. *13*

– Order/Judgment of Court – Principle of Reasoning – Held – Division Bench of High Court dismissed the writ petition cursorily without dealing with any of the issues arising in the case as also the arguments urged by parties – The only expression used by Court while disposing the case was "on due consideration" and it is not clear as to what was that due consideration – Courts need to pass reasoned order – It causes prejudice to parties and deprive them to know the reasons as to why one party has won and other has lost – Matter remanded back to High Court for decision afresh – Appeal allowed: *Central Board of Trustees Vs. M/s. Indore Composite Pvt. Ltd., I.L.R. (2019) M.P. 1 (SC)*

– Pendency of Reference – Apex Court has held that pendency of a reference before larger bench does not mean that all other proceedings involving same issue would remain stayed till a decision is rendered in reference by larger bench: *Anurag Mathur Vs. State of M.P., I.L.R. (2017) M.P. 2031*

– Pleadings – Issuance of Improper Summons – Issue not raised in the petition can not be permitted to be raised in arguments: *Sunil Singh Vs. Smt. Meenakshi Nema, I.L.R. (2016) M.P. 2039*

– Principle of Law – Held – The principle of law is that High Court can interfere in disciplinary matter if finding recorded by disciplinary authority are perverse or its a case of no evidence or there is violation of natural justice or rule: *Ashok Sharma (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 2173*

– Proof beyond reasonable doubt – Meaning – Degree of proof must not be beyond a shadow of doubt: *Bhawar Singh Vs. State of M.P., I.L.R. (2016) M.P. 1152 (DB)*

– Prosecution of Civil Servant – For offence arising out of discharge of his official duties – Requisite – The impugned act must disclose preponderant existence of mens rea: *Malay Shrivastava Vs. Shankar Pratap Singh Bundela, I.L.R. (2017) M.P. 199*

– Reliance of Document – Once a part of content relied, no illegality in relying upon other parts, irrespective to the contents been proved or not: *Bablu @ Netram @ Netraj Vs. Smt. Abhilasha, I.L.R. (2016) M.P. 1138*

– Restoration of Case – Grounds – Dismissal of case for non-appearance – Counsel for applicants submitted that he could not mark the case in the cause list and for this mistake of the counsel, party should not suffer – Held – Computer generated cause list shows that case was fixed on 18.09.2017 and intimation to this effect was sent to the counsel well in advance through SMS on his mobile phone on 15.09.2017 and therefore submission of the counsel is not acceptable rather it is an afterthought – Not a case of bonafide mistake but a deliberate and conscious attempt to hood wink the Court and process of administration of justice – If applicants suffered because of the lapse of their counsel, they are free to take recourse to legal remedy available – Restoration of case is not to be taken as a matter of right – Petition dismissed: *Saroj Rajak Vs. State of M.P., I.L.R. (2018) M.P. *10 (DB)*

– Revision – Listed for admission – Not necessary to consider the argument of respondent: *Rajesh Pandey Vs. Geeta Devi Poddar, I.L.R. (2016) M.P. 223*

– Revisional Jurisdiction – Scope – Held – Marshalling of evidence is beyond the scope of revisional jurisdiction of this Court, which is inherently limited to the enquiry into material available against the accused persons to see that ingredients of offences charged against them are made out or not: *Omprakash Gupta Vs. State of M.P., I.L.R. (2018) M.P. 603*

– Second Recommendation – Held – Dental Council of India was very well aware of the fact that such a recommendation has already been rejected by the Central Government and the matter has been concluded by the High Court as well as by the Supreme Court – At no point of time, D.C.I. sought permission of the High Court to move second recommendation to Central Government – Stand and conduct of D.C.I. is highly deprecated: *Association of Private Dental and Medical Colleges Vs. Union of India, I.L.R. (2017) M.P. 1508 (DB)*

– Special Enactment and General Law – Although there is no occasion of any clash or contradiction between the provisions of Section 69(2) of the Partnership Act, 1932 and Order 30 of the Civil Procedure Code, it is settled law that special enactment prevails upon the general law – The law relating to procedure gives way to substantive provisions of law – Provisions of Partnership Act shall supersede upon the provisions of Civil Procedure Code: *Vijay Kumar Vs. M/s. Shriram Industries, I.L.R. (2017) M.P. 937*

– Subsequent Application – Maintainability – Held – As earlier application was not decided on merits and was dismissed for want of prosecution, therefore

subsequent application filed by the Bank was rightly entertained by the District Magistrate: *Prafulla Kumar Maheshwari Vs. Authorized Officer and Chief Manager, I.L.R. (2018) M.P. 463*

– Validity of Order – Held – It is well settled proposition of law that validity of an order has to be judged only on the basis of contents of order and not by any reason supplemented in the return/affidavits filed by the State in support of the order: *The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1063*

– Writ Jurisdiction – Held – Remedy of writ cannot be used for declaration of private rights of the parties or enforcement of their contractual rights and obligations: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

PRAKOSTHA SWAMITVA ADHINIYAM, M.P., 2000 (15 OF 2001)

– Sections 2, 3(b), 3(i) & 4(2) – Term "Land", "Building" & "Apartment" – Held – "Apartment" is a part of "building" and not the building itself – Section 2 of Adhiniyam is applicable to "every apartment" in any "building" constructed by promoter and not the land or building itself – Adhiniyam of 2000 intends to recognize the right of ownership on an apartment and not on any land or building – In present case, individual lease for apartment/s was permissible, lease of entire land or building is not at all envisaged: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

PRECEDENT

– Binding Precedent – Held – A single bench judgment where proceedings under the Prevention of Corruption Act was quashed relying on Rule 9 of the Rules of 1976 cannot be a binding precedent because it failed to consider the statutory provisions of Cr.P.C., IPC and Act of 1988 – Judgment of single bench is per incuriam: *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *38 (DB)*

– Dismissal at Admission Stage – Held – SLP dismissed in limine at admission stage, does not amount to precedence: *MPD Industries Pvt. Ltd. (M/s) Vs. Union of India, I.L.R. (2020) M.P. 905 (DB)*

– Doctrine of Prospective Overruling – Judgment of Supreme Court – Held – Principle of prospective overruling is not applicable in India and would not apply in respect of judgment of Supreme Court unless and until it is expressly so mentioned in judgment – Further, where question of law is settled by Courts, then it has to be held that the said question of law was in existence right from day one: *Gomati Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *67*

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT (57 OF 1994)

– Sections 17(2), 17(3) & 28(1)(a) – Cognizance of Offence – Complainant – Appropriate Authority – Cognizance was taken by the trial Court against the petitioners on the complaint made by Chief Medical and Health Officer (CMHO) – Challenge to – Held – As per Section 17(2), appointment of appropriate authorities are required to be notified in Official Gazette – Section 28(1)(a) put an embargo on the Court for not taking cognizance until complaint is made by appropriate authority concerned which denotes Section 17(3)(a) or any officer authorized by the Central or State Government or the appropriate authority which denotes Section 17(3)(b), under this Act – In the instant case, no document has been produced or brought on record indicating that CMHO of concerned district has been authorized by appropriate authority notified u/S 17(3) of the Act and has been conferred power to make a complaint in the Court – CMHO Bhopal and Hoshangabad are not the officer authorized u/S 17(2), 17(3) and 28(1)(a) of the Act of 1994 and therefore cognizance taken by Court on complaint made by them is illegal and without jurisdiction and is liable to be quashed – Petitions allowed: *Swaroop Charan Sahu (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. *39*

– Sections 17(2), 17(3)(b) & 28(1)(a) – Cognizance of Offence – Complainant – Appropriate Authority – Cognizance was taken by the trial Court against petitioner on the complaint made by Chief Medical and Health Officer (CMHO) – Challenge to – Held – Until the complaint is signed and presented before competent Court by officer authorized or appropriate authority as notified by the State Government, Court cannot take cognizance on such complaint – The CMHO Bhopal has not been notified as officer authorized by appropriate authority to act as per Section 17(3) of the Act and no notification in this respect has been produced before this Court – It can safely be concluded that CMHO Bhopal has not been authorized by District Magistrate Bhopal as appropriate authority to make the complaint as required u/S 28(1) of the Act – Complaint has not been made by 'appropriate authority' or any officer authorized by the State government under the provisions of the Act of 1994 – Order of trial Court taking cognizance is not in accordance with law – Complaint made by CMHO Bhopal is quashed – Petition allowed: *Das Motwani (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *102*

– Sections 23, 25 & 28 – See – Criminal Procedure Code, 1973, Section 482: *Raju Premchandani (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 1578*

– Section 23 & 28(1)(b) – Complaint – "Appropriate Authority" – Held – As per Section 28, complaint can be filed not only by Appropriate Authority but also

by a person, who fulfills requirement of Section 28(1)(b) – SDO (Revenue) is not "Appropriate Authority" to file complaint, but such mistake can only be termed as irregularity which can be rectified and not such an illegality which would result in dismissal of complaint – Appropriate authority can join the complaint at later stage – Application disposed: *Usha Mishra (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1194*

PREPARATION & REVISION OF MARKET VALUE GUIDELINES RULES, M.P., 2000

– Rule 3(2)(b) and Stamp Act (2 of 1899), Section 47 A – Ultra vires – Section 47-A of the Indian Stamp Act 1899 – The guidelines issued by the Valuation Committee are in furtherance of the Rules of 1975 read with Rules of 2000 and not a new dispensation created thereunder, so as to invoke the principle of "Delegatus non potest delegare" – Moreover, the delegation is to evolve norms for determination of minimum value, as has been provided in Section 47-A of the Act – It is not a case of excessive delegation or a matter conferring parallel powers in the Valuation Board to evolve norms related to determination of market value – Further, the minimum value prescribed by the Valuation Board merely serves as a guideline and non-binding on the Registering Authorities – The Registering Authorities are free to determine the market value of the property as per the principles set out in the Act read with Rules of 1975, rather obliged to do so – Petition dismissed: *Ramprasad Vs. Central Valuation Board, I.L.R. (2016) M.P. 2218 (DB)*

PREVENTION OF CORRUPTION ACT (49 OF 1988)

SYNOPSIS

1. Amendment – Prospective Operation

– Section 13(1)(d) and Prevention of Corruption (Amendment) Act (16 of 2018), Section 7 & 13 – Operation – Held – Provisions of the amended Act of 2018 is purely prospective and not retrospective: *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

2. Application for Further Investigation

– Section 13(1)(e) r/w Section 13(2) and Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 173(8) & 465(2) – Revision against dismissal of application for issuance of direction to conduct further investigation with regard to his own income from various sources as well as income of family members – Held – Prayer made by petitioner clearly indicates that in guise of further investigation he wants to establish his defence – A public servant accused of being in possession of disproportionate assets is required to establish his defence before trial Court and that the investigating agency is not under an obligation to look into the same – Application devoid of merit dismissed: *Raj Kamal Sharma Vs. State of M.P. through Special Police Establishment (Lokayukt), I.L.R. (2017) M.P. *58 (DB)*

3. Appreciation of Evidence

– Sections 7, 13(1)(d) & 13(2) – Appellant – Assistant Sub-Inspector of Police – Illegal gratification – Facts – Accident case – F.I.R. – Compromise between parties – Appellant demanding Rs. 500/- as illegal gratification for closing the matter – Complaint to Lokayukt – Illegal demand was recorded in a tape recorder – Case was registered – Trap laid – Appellant caught red handed with tainted currency notes – Currency notes and jacket of the appellant seized – F.S.L. report positive – Trial Court – Conviction & Sentence – Appeal against – Held – It is nobody's case that the currency notes were handed over by the complainant to the appellant for any other purpose than by way of illegal gratification, so it is a necessary conclusion that the currency notes were given as a motive or reward for showing favour and this fact is duly supported by testimony of 18 prosecution witnesses – Conviction & sentence awarded by the Trial Court upheld – Appeal dismissed: *Gulab Singh Vs. State of M.P., I.L.R. (2016) M.P. *40 (DB)*

– Sections 7, 13(1)(d) & 13(2) – Illegal Gratification – Demand – Appreciation of Evidence – Held – Appellant before the incident, vide letter to his seniors expressed apprehension that he might be trapped in a false case by complainant – FIR lodged not by society but by complainant in personal capacity, even bribe amount was also raised from personal resources – Trap was organized in unseemly haste within an hour and half – Although, facility of tape recorder was available, but

no attempt made by prosecution to get recorded the conversation of parties – Several anomalies, discrepancies in prosecution evidence which failed to prove beyond reasonable doubt not only demand of bribe but also voluntary acceptance of currency notes by appellant – Benefit of doubt must go to appellant – Conviction set aside – Appeal allowed: *Narayanlal Tandan Vs. State of M.P., I.L.R. (2019) M.P. 442*

– Section 13(1)(e) & 13(2) – Conviction – Criminal Trial – Grounds and Principle – Held – To succeed in criminal trial, prosecution has to pitch its case beyond reasonable doubt and lodge it in the realm of "must be true" category and not leaving it in domain of "may be true" – In present case, prosecution failed to prove beyond reasonable doubt the charge of criminal misconduct u/S 13(1)(e) and punishable u/S 13(2) of the Act of 1988: *Vasant Rao Guhe Vs. State of M.P., I.L.R. (2017) M.P. 2304 (SC)*

– Section 13(1)(e) & 13(2) – Disproportionate Assets – Appreciation of Evidence and Documents – Conviction – Held – Trial Court concluded that during the check period, accused had an income of Rs. 50,000 by selling two properties whereas the specific written endorsement on Agreement of sale, Statement of the Investigating Officer and the Tabulation Chart prepared by the prosecution itself, clearly shows that accused had an income of Rs. 3,50,000 from selling his two properties during the check period – Further held – The contention that there was a typographical error deserves to be accepted whereby Rs. 50000 was typed in place of Rs. 3,50,000 – Prosecution has not discharged their burden to prove the case beyond reasonable doubt – Accused was not in possession of disproportionate assets – Findings of the Court below is perverse and is set aside – Appeal allowed: *Dhaniram Lakhera Vs. State of M.P., I.L.R. (2017) M.P. *34 (DB)*

– Sections 13(1)(e), 13(2) & 19 and Penal Code (45 of 1860), Section 193 – Disproportionate Property – Appreciation of Evidence – Held – Independent witnesses proved the fact that at the time of seizure of amount, appellant disclosed, that, same belongs to her cousin – No reliable evidence to prove that accused did not made such disclosure – Even if she was silent on that point of time, no adverse inference can be drawn for her silence – Accused can discharge his burden proving the fact by the standard of preponderance of probability – Appellants have explained the source of alleged disproportionate property, which cannot be termed as an afterthought – Prosecution failed to prove the case beyond reasonable doubt – Conviction set aside – Appeals allowed: *Shahida Sultan (Ku.) Vs. State of M.P., I.L.R. (2019) M.P. 1138*

4. Benefit of Doubt

– Section 11 and Penal Code (45 of 1860), Section 201 – Appellant – Deposition writer cum stenographer in District Court – Allegations – Demanding and

accepting bribe of Rs. 6000/- from accused persons for payment to a Judge in a sessions trial for obtaining judgment of acquittal – Accused persons borrowed money from PW- 3 and paid it to the appellant before pronouncement of the judgment – Accused persons convicted of the offence u/S 201 of IPC – Complaint – Appellant summoned in chamber of the Judge – Appellant confessed of accepting Rs. 6000/- in presence of other Judges, Advocates etc. – Prosecution – Extra-Judicial confession – Other than Judges, none of the Advocates or other court staff or one of the accused person supported the prosecution case – Held – Evidence of the Advocates, most of them pretty senior cannot be put aside or ignored and the evidence of the Judicial Officers touching extra Judicial confession made by the appellant do not find support from any of the prosecution witnesses i.e. Advocates, court staff or the bribe giver etc. hence the appellant is given benefit of doubt – Conviction & sentence set aside – Appeal allowed: *Gopal Singh Vs. State of M.P., I.L.R. (2016) M.P. *39 (DB)*

– Section 13(1)(e) & 13(2) – Disproportionate Assets – Hypothetical Quantification – Presumptions – Public servant convicted for possessing disproportionate assets – Held – Prosecution admitted that appellant's agricultural income and pay for certain months were omitted while calculating total income – Courts below indulged in voluntary exercise to quantify/compute the same premised on presumptions – Any adverse inference prejudicial to appellant cannot be drawn when he was not confronted with altered imputation – Appellant subjected to a trial and was convicted for a charge different from one originally framed against him and that too on basis of calculations by applying guess work – Entitled for benefit of doubt – Conviction set aside – Appeal allowed: *Vasant Rao Guhe Vs. State of M.P., I.L.R. (2017) M.P. 2304 (SC)*

5. Complainant turning Hostile

– Section 7 & 13(2) – Complainant turning hostile – Effect – Even if the complainant has turned hostile, part of his statement which supports the prosecution story can be relied on – For proving the offence u/S 7 and 13(1)(d) of the Act, both demand and acceptance need to be proved but if complainant turned hostile, it can also be proved by circumstantial or other oral documentary evidence – Evidence of the hostile witness cannot be rejected merely because he has been declared hostile and such evidence does not become effaced from the record – Relevant portion of evidence of hostile witness can be used at least to corroborate the evidence of other independent witnesses – In the present case, FSL report of hand wash, trouser wash and note wash clearly indicates the recovery of bribe money – Basic ingredients i.e. Demand of bribe, its acceptance and recovery of currency notes, required to prove the offence, stands duly proved beyond reasonable doubt – Ocular testimony of prosecution witnesses has been duly corroborated by the documentary evidence – Based on the facts and evidence, a legitimate presumption can be drawn that appellant

has received or accepted the said currency notes on his own volition – Trial Court rightly convicted the appellant – Appeal dismissed: *Rajesh Khatik Vs. State of M.P., I.L.R. (2017) M.P. 924 (DB)*

6. Double Jeopardy

– Section 13(1)(d) and Criminal Procedure Code, 1973 (2 of 1974), Section 300 – Double Jeopardy – Held – In various FIR's and pending trials against petitioner, although the facts are identical but all are separate and individual cases with different victims – It is not a case of several victims in same transaction but a situation where each case arises from a separate transaction – Petition dismissed: *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

7. Hostile Witness

– Sections 7, 13(1)(d) & 13(2) – Illegal Gratification – Hostile Witness – Credibility – Held – Complainant although turned hostile, but for major part, supports prosecution story including demand and acceptance of bribe – Other panch witnesses have not turned hostile and supported prosecution story – Tainted currency notes were recovered from appellant's pocket, particulars of which were same as recorded earlier during pre-trap stage – It was established that money was accepted as gratification – Defence taken by appellant not established – Conviction and sentence upheld – Appeal dismissed: *Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt, I.L.R. (2020) M.P. 952*

8. Interested Witness

– Sections 7, 13(1)(d) & 13(2) – Testimony of Complainant – Interested Witnesses – Credibility – Allegation, that appellant, a Deputy Registrar, Co-operative Society took illegal gratification from complainant/member of society on the threat that he will dissolve the society on ground of irregularities – Held – Facts and evidence reveals that appellant was inquiring into the affairs of society and complainant wanted the appellant/public servant to desist from performing his legal duties – Complainant is a highly interested witness and wanted to derail the inquiry – His uncorroborated testimony cannot be relied upon: *Narayanlal Tandan Vs. State of M.P., I.L.R. (2019) M.P. 442*

9. Jurisdiction of Local Police

– Section 17 and Special Police Establishment Act, M.P. (17 of 1947), Section 3 & 5-A – Investigation – Jurisdiction of Local Police – Held – Local police has the jurisdiction to investigate the offence under the provisions of Prevention of Corruption Act – Only lapse on the part of investigating agency appears that no prior sanction

was obtained from JMFC as provided u/S 17 of the Act – Such lapse on the part of investigation agency in investigation as a whole is found vitiated: *Rajani Dabar (Smt.) (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 253 (DB)*

10. Jurisdiction of Special Court

– Section 3 & 4 – Jurisdiction of Special Court to frame the charges against the persons other than public servants for offences falling under IPC or any other law for the time being in force when it had discharged the other co-accused persons who were the public servants – Held – No charge of any conspiracy was framed against any of the non-public servants coupled with any of the sections of the Prevention of Corruption Act – It is also not a case where the public servant had died after framing of charges against all accused persons whereas public servants have been discharged – Wrong interpretation of the ratio laid down in the case of Jitendra Kumar Singh and failure in analysing the import of Prevention of Corruption Act itself – Impugned orders were quashed – Special Court is directed to remit the charge sheet to Chief Judicial Magistrate to proceed in accordance with law: *K.L. Sahu Vs. State of M.P., I.L.R. (2017) M.P. 959 (DB)*

11. Maintainability of Revision

– Section 13(1)(e) and Vishesh Nyayalaya Adhiniyam, M.P. 2011, Section 2(1)(e) – "Offence" – Maintainability of Revision – Definition of offence given in Section 2(1)(e) of the Adhiniyam shows that Adhiniyam of 2011 comes into operation only when offence u/S 13(1)(e) of PC Act, independently or in combination with other provision of PC Act or any provision of IPC is alleged in any case and not otherwise – Presence of allegation u/S 13(1)(e) of the PC Act is an essential ingredient to attract Adhiniyam of 2011 – Allegation made merely in respect of offence of IPC would not attract the Adhiniyam of 2011 – In the instant case, only offence under IPC was only registered against applicant – Revision is maintainable: *Vinay Kumar Vs. State of M.P., I.L.R. (2017) M.P. 2283*

12. Possibility of False Implication

– Section 7 & 13(1)(d) r/w 13(2) – Conviction – Testimony of Complainant – Demand of illegal gratification by a police officer – Held – There are material contradictions and omissions between complainant's version and the prosecution witnesses – Rojnamcha entries also did not support the prosecution case – Complainant himself has a criminal background and has been twicely prosecuted, once u/S 456, 294 & 506 IPC and secondly u/S 392 & 397 IPC and from the record it appears that complainant came from jail to record his evidence in the present case and in such circumstances it is unsafe to rely upon his evidence – Voices in the audio cassette were inaudible – Looking to the evidence on record there is a strong possibility of

false implication of accused by the complainant – Trial Court committed gross error in holding that prosecution has proved the case beyond reasonable doubt – Demand of illegal gratification by the accused is not proved – Conviction and sentence unsustainable in law and is hereby set aside: *Archana Nagar (Ku.) Vs. State of M.P., I.L.R. (2017) M.P. 1162 (DB)*

13. Presumption/Rebuttal

– Section 20(1) – Presumption – Held – Acceptance of gratification implies that there was demand – No defence by appellant that the money was stealthily inserted into his pocket – No such contention in accused statement – Legal presumption u/S 20(1) of the Act drawn against appellant – Onus was upon appellant to rebut the same which he failed to discharge: *Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt, I.L.R. (2020) M.P. 952*

14. Quashment of Charge

– Section 7 & 13(1)(d) and Criminal Procedure Code, 1973 (2 of 1974), Sections 397 & 482 – High Court's powers of revision – Quashment of charges – Reappreciation of evidence – Impermissibility – Held – High Court should not unduly interfere – No meticulous examination is needed for considering whether the case would end in conviction or not, at the stage of framing of charge or quashing of charge – There is sufficient prima facie evidence to frame charge – Order of the court below does not suffer from any irregularity, illegality or perversity – Not called for any interference – Petition dismissed: *V.K. Sharma Vs. State of M.P., I.L.R. (2016) M.P. 2561 (DB)*

– Section 8 & 12 – Revision Against framing of Charge – Ingredients – After receiving the bribe amount, the main accused handed over the amount to his wife (applicant) on the spot and thereafter they were trapped and bribe amount was recovered from applicant – Held – It cannot be presumed that wife merely acts as a channel between bribe giver and the receiver public servant (husband) without any gain of herself – She accepted the bribe through her husband – She is liable for trial u/S 8 and 12 of the Act of 1988: *Shobha Jain (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2555 (DB)*

– Section 13(1) & 13(2), Penal Code (45 of 1860), Sections 218, 466, 471 & 120 B, Civil Services (Pension) Rules, M.P. 1976, Rule 9 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 & 482 – Quashment of Charge Sheet and Proceedings – Limitation – Applicant contended that judicial proceedings have been initiated after 4 years of his retirement and in view of Rule 9 of Rules of 1976, there is a limitation of 4 years for such proceedings – Held – Rules of 1976 deals with

payment of pension and limitation of 4 years is in that context and has got nothing to do with cases under the Penal Code or under the Act of 1988 – Application dismissed: *Suresh Kumar Vs. State of M.P., I.L.R. (2019) M.P. *38 (DB)*

– Section 13(1)(d) & 13(2) – Unlawful Gain – Criminal Liability – Report of the committee shows that there were irregularities in payment of vehicles which were engaged as Janani Mobility Express – Applicant only approved the payment after file was scrutinized by two persons below – Applicant has no mens rea to gain illegally - *Prima facie* no evidence of unlawful gain – Further held, there is a presumption in case of financial irregularity and there is also heavy duty on the person approving financial proposal – Person should be more cautious – However any negligence in performing their duty would not incur any criminal liability – Specific unlawful gain has to be indicated – In the present case, as per the statements recorded, no one say that any amount given to them was taken back by applicant for her own use – No case is made out – Order framing charges is set aside – Application allowed: *Rajani Dabar (Smt.) (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 253 (DB)*

– Section 13(1)(d) & 13(2), Penal Code (45 of 1860), Sections 109, 417, 420 r/w 120-B and Criminal Procedure Code, 1973 (2 of 1974), Sections 197, 397 r/w 401 & 482 – Mahatma Gandhi Employment Guarantee Scheme – Vidhan Sabha Nirvachan Kshetra Vikas Yojana (M.P.) – Clause 2.1, 2.2, 3.5 & 4.1 – Vidhayak Nidhi – Applicant alleged to have misused funds of Vidhayak Nidhi by spending the amount of funds for her personal gain – Guilty intention is an essential ingredient of the offence of cheating – Mens rea on the part of the accused must be established – In order to establish allegation u/s 420 intention to deceive should be in existence at the time when inducement was done – There is nothing on the part of the petitioner of having prepared a false report on the basis of which certain works were completed under government scheme – No prima facie case u/s 13(1)(d) and 13(2) and also section 417, 420 r/w section 120-B is made out – Charges framed against all accused persons set aside: *Kalpana Parulekar (Dr.) (Ku.) Vs. Inspector General of Police Special Police Establishment Lokayukt, I.L.R. (2016) M.P. 599 (DB)*

15. Removal from Service/Competent Authority

– Sections 7, 13(1)(d), 13(2) & 19 – Removal from Service – Competent Authority – Held – Prima facie it is established that by way of delegation, Sanctioning Authority was vested with power of removing petitioner from his service, thus he was the competent authority – Petition dismissed: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

16. Validity of Sanction/Competent Authority

– Sections 7, 13(1)(d) & 13(2) – Appellant – Assistant Sub-Inspector of Police – Illegal gratification – Sanction – Objection – Authority has not considered the material before granting the sanction – Question of validity of sanction has not been pursued at the time of pendency of the trial – Held – Courts will not sit in appeal to judge the adequacy of material granting sanction – The object of the Act is not to provide to a public servant a safeguard for his incriminating act by raising the technical plea of invalidity of sanction – Provisions of the Act of 1988 are a safeguard for the innocent and is not a shield for the guilty – Objection turned down: *Gulab Singh Vs. State of M.P., I.L.R. (2016) M.P. *40 (DB)*

– Sections 7, 13(1)(d), 13(2) & 19 – Sanction Order – Validity – Held – If trial Court finds the sanction order to be defective, it shall discharge the accused and return the charge-sheet to prosecution which shall be at liberty to file charge-sheet once again after seeking a fresh sanction u/S 19 of the Act: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Sections 7, 13(1)(d), 13(2) & 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Sanctioning Authority – Examination of – Stage of Trial – Enumerating the benefits, it is held/directed that with prospective effect, while trying a case under Act of 1988, Trial Court shall examine the sanctioning authority exercising powers u/S 311 Cr.P.C. before framing charge, even if it is not challenged by accused because validity of sanction order can go to the root of case and can render the very act of taking cognizance itself void ab initio: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Sections 7 & 13(1)(d)(I)(III) and Criminal Procedure Code, 1973 (2 of 1974), Sections 187 & 384 – Sanction – Government Servant – Sanction order – Narration – Sanction granted to file charge sheet on the ground that competent authority is appointing authority – Held – As there is no finding recorded by the Authority concerned that it has perused the record and has applied its mind before granting sanction – Order of sanction to prosecute the applicant is quashed – Liberty given to consider the case for grant of sanction in accordance with law – Revision accordingly disposed of: *Bahadur Singh Gujral Vs. State of M.P., I.L.R. (2016) M.P. 3390 (DB)*

– Section 13(1)(d) and Prevention of Corruption (Amendment) Act (16 of 2018), Section 19 – Sanction – Retired Public Servant – Held – Neither in parliamentary debate nor in amended Act, there is any mention of quashing of existing cases against retired public servants in absence of previous sanction – Effect of substitution must be examined on rule of "Construction against Evasion" – Legislative intent in unamended and amended Act is common that a corrupt public servant should not be

allowed to slip through the net – Petition dismissed: *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

– Sections 13(1)(d), 13(2) & 19, Penal Code (45 of 1860), Sections 120-B, 420, 467, 468 & 471 and Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Sanction – Held – Since sanction u/S 19 of the Prevention of Corruption Act has already been obtained, there is no separate requirement to obtain sanction u/S 197 Cr.P.C. for prosecuting petitioners for offences under the IPC: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

– Sections 13(1)(d), 13(2) & 19 and Penal Code (45 of 1860), Sections 218, 466, 471, 474 & 120-B – Sanction for Prosecution – Petition against dismissal of application u/S 19 of the Act of 1988 filed by the petitioner/accused seeking his discharge on the ground that at the time of filing of charge sheet, he was a Corporator of Indore Municipal Corporation and being a public servant, sanction as required for his prosecution was not taken by the respondents – Held – U/S 19 of the Act of 1988, question of obtaining sanction is relatable to the time of holding of office when offence was alleged to have been committed and in case when the person is not holding the said office as he might have retired, superannuated, discharged or dismissed then the question of sanction would not arise – In the instant case, petitioner was an elected Corporator from 2000 to 2005 and this term came to end by efflux of time – Simply because he was again elected as Corporator in February 2015, will not go to relate back his position as Corporator in the year 2000 to the same post – Subsequent election in 2015 was not by virtue of his holding the office of Corporator due to his election in the year 2000 rather it was on account of his fresh mandate, therefore two offices were different for the purpose of prosecution – No sanction required – Petition dismissed: *Suraj Kero Vs. State of M.P., I.L.R. (2017) M.P. 1237 (DB)*

– Sections 13(1)(e), 13(2) & 19 and Penal Code (45 of 1860), Section 193 – Sanction – Competent Authority – Held – Apex Court concluded that Secretary, Law Department M.P. is competent authority to grant sanction u/S 19 of the Act – Any inconsistent opinion of parent department of accused is of no consequence and same is not binding on competent authority – Sanction order shows that whole material evidence was produced before authorities, whereafter considering every piece of evidence carefully, order has been passed: *Shahida Sultan (Ku.) Vs. State of M.P., I.L.R. (2019) M.P. 1138*

– Section 19 – Sanction for Prosecution – Competent Authority – Held – In view of amendment in circular, in spite of a contrary opinion of Administrative department, the Department of Law and Legislative Affairs was competent to overrule that opinion and accord sanction – This Court has earlier concluded that opinion of parent department is not at all binding for Law department while considering the case

of sanction – Sanction granted after due application of mind with a speaking order and cannot be held to be invalid: *Narayanlal Tandan Vs. State of M.P., I.L.R. (2019) M.P. 442*

– Section 19 – Sanction for Prosecution – Procedure – Held – Apex Court concluded that sanctioning authority itself needs to examine/scrutinize the whole record with accuracy and precision and by independently applying his mind, taking into account all the relevant facts before grant of sanction: *Monika Waghmare (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1581 (DB)*

– Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Examination of Sanctioning Authority – Stage of Trial – Held – Apex Court concluded that validity of sanction can be examined at any stage of the "proceedings" which includes the stage of framing of charges which is a pre-trial stage of proceedings – Sanctioning authority can be examined u/S 311 Cr.P.C. at the time of taking cognizance – Guidelines issued by this Court is not in conflict with judgment of Apex Court – Prayer rejected: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Pre-trial Examination of Sanctioning Authority – Video Conferencing – Held – Sanctioning authority is not a material witness but only a witness to a fact of procedural fulfillment – There can be no objection from accused to the examination and cross examination of sanctioning authority through video conference – Thus there is no impracticality in implementation of the guidelines issued by this Court: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

– Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 & 319 – Examination of Sanctioning Authority – Held – Section 311 Cr.P.C. empowers trial Court to examine sanctioning authority as a witness at pre-charge stage itself and record his statement and also subject to cross-examination if needed, to ascertain whether he was competent to grant sanction and the sanction was granted with due application of mind to the record of the case: *Ravi Shankar Singh Vs. MPPKVVCL, I.L.R. (2020) M.P. 1157 (DB)*

– Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Sanction for Prosecution – Disparaging Remarks – Held – Sanction for prosecuting petitioner granted on basis of certain disparaging/adverse remarks in judgment of a case, in which petitioner was not even a party/accused – No opportunity of hearing was given to petitioner, which is against principle of natural justice – Prejudice caused to petitioner established – Disparaging remarks and sanction granted on that basis is set aside – Application allowed: *Monika Waghmare (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. 1581 (DB)*

– Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Sanction – Petitioner raised an objection with regard to taking cognizance of the case against him on the ground that there was no proper sanction to prosecute him in accordance with the provisions of Section 19(1)(c) of the Act, 1988 – Held – Trial Court has not committed any error of law in observing that the question of valid sanction can be considered at the time of passing judgment – Petition disposed of: *S.S. Agnihotri Vs. State of M.P., I.L.R. (2016) M.P. 2396 (DB)*

– Section 19(2) – Sanction for Prosecution – Competent State Authority – Territorial Jurisdiction – Held – Sanction shall be granted by that Government or Authority which would have been competent to remove the public servant from his office at the time of commission of offence – Although at the time of grant of sanction, appellant was employee of Chhattisgarh but at the time, offence was alleged to have been committed, he was an employee of Madhya Pradesh, thus sanction granted by government of Madhya Pradesh was proper and not beyond jurisdiction: *Narayanlal Tandan Vs. State of M.P., I.L.R. (2019) M.P. 442*

– Section 19 – See – Criminal Procedure Code, 1973, Section 482: *Rajeev Lochan Sharma Vs. State of M.P., I.L.R. (2016) M.P. 3396 (DB)*

– Section 19(1)(c) – See – Criminal Procedure Code, 1973, Section 197: *Kamal Kishore Sharma Vs. State of M.P. Through Police Station State Economic Offence, I.L.R. (2020) M.P. 236 (DB)*

– Section 19(1)(c) – See – Penal Code, 1860, Sections 465, 471 & 120-B: *Vinay Kumar Vs. State of M.P., I.L.R. (2017) M.P. 2283*

– Section 19(4), Explanation (a) – See – Constitution – Article 141: *State of M.P. SPE Lokayukta, Jabalpur Vs. Ravi Shankar Singh, I.L.R. (2020) M.P. 2663 (DB)*

17. Voice Recording & Examination

– Sections 7, 13(1)(d) & 13(2) – Demand of Bribe – Examination of Voice – Proof – Held – Voice of appellant recorded in digital voice recorder but prosecution has not taken any sample voice of appellant for comparison – Aspect of demand through tape recorder, not established by prosecution beyond reasonable doubt: *Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt, I.L.R. (2020) M.P. 952*

– Sections 7, 13(1)(d) & 13(2) and Constitution – Article 20 & 20(3) – Admissibility of Voice Recording – Application by prosecution for providing voice sample of accused persons was allowed – Challenge to – Held – Trial has not yet commenced – Charges have not been framed by trial Court – Providing voice sample

would not prejudice to the applicant – Voice recorder conversation is admissible in evidence and there is no violation of Article 20 or 20(3) of Constitution – Application dismissed: *Buddha Sen Kumhar Vs. State of M.P., I.L.R. (2017) M.P. *132 (DB)*

18. Miscellaneous

– Section 7 – See – Criminal Procedure Code, 1973, Section 397 r/w 401: *Bahadur Singh Gujral Vs. State of M.P., I.L.R. (2016) M.P. 3390 (DB)*

– Section 13 – See – Penal Code, 1860, Section 40 & 41: *Vinod Kumar Vs. Central Bureau of Investigation, I.L.R. (2019) M.P. 2384 (DB)*

– Section 13(1)(d) – See – Penal Code, 1860, Section 409, 420, 467, 468, 471, 120-B: *Manish Kumar Thakur Vs. State of M.P., I.L.R. (2018) M.P. 235 (DB)*

– Section 13(1)(d) & 13(2) – See – Criminal Procedure Code, 1973, Section 438: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

– Section 13(1)(d) & 13(2) – See – Penal Code, 1860, Section 420 & 120-B: *State of M.P. Vs. Yogendra Singh Jadon, I.L.R. (2020) M.P. 1242 (SC)*

– Section 13(1)(e) – See – Limitation Act, 1963, Sections 3 & 29(2): *State of M.P. Vs. Radheshyam, I.L.R. (2016) M.P. 1171 (DB)*

– Section 13(2) r/w 13(1)(d) – See – Criminal Procedure Code, 1973, Section 482: *Yash Vidyarthi Vs. Central Bureau of Investigation, New Delhi, I.L.R. (2016) M.P. *17*

PREVENTION OF CORRUPTION (AMENDMENT) ACT (16 OF 2018)

– Section 7 & 13 – See – Prevention of Corruption Act, 1988, Section 13(1)(d): *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

– Section 19 – See – Prevention of Corruption Act, 1988, Section 13(1)(d): *Vijendra Kumar Kaushal Vs. Union of India, I.L.R. (2020) M.P. 399 (DB)*

PREVENTION OF CRUELTY TO ANIMALS ACT (59 OF 1960)

– Sections 11(b), 11(d) & 11(5) – See – Govansh Vadh Pratishedh Adhiniyam, 2004, Sections 4, 5, 6, 6-A, 9, 11(5) & 11(B): *Sheikh Kalim Vs. State of M.P., I.L.R. (2016) M.P. 924*

PREVENTION OF FOOD ADULTERATION ACT (37 OF 1954)

– Sections 2(ia), 7(i), 13(2), 16(1)(a)(i) & 20-A – Adulteration and Misbranding – Quashment of Charge – Petition against framing of charges against the shop owner and manufacturer (present applicant) – Food inspector carried out inspection of a shop purchased three packets of *haldi* and sent for public analyst whereby it was revealed that same was adulterated and misbranded – Held – U/S 13(2) of the Act of 1954, applicant can request for Re-examination of the sample from the Central Food Laboratory but in the present case, shelf life of sample of *haldi* has lapsed prior to filing of complaint before the Court, thus defence of applicant would be severely prejudiced if right available u/S 13(2) of the Act of 1954 is taken away – Cognizance taken against the applicant so far it relates to adulteration is hereby set aside – Further held – Perusal of complaint shows that on the cover of the seized article (*haldi* packets), complete name and address of the manufacturing or packaging unit has not been provided, hence for the charge of misbranding, *prima facie* case is made out against the applicant – For the charge of misbranding, trial may proceed – Application partly allowed: *Sai Enterprises (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. *144*

– Sections 2(ia)(a), 2(ix)(g), 11 & 13(2) – Adulteration and Misbranding – Held – Where examination of contents/ingredients of food article is integral to prove offence of "misbranding", the procedure prescribed u/S 11 & 13 has to be complied with, regardless of whether "adulteration" is alleged or not – This includes right to obtain second opinion u/S 13(2) of the Act: *Alkem Laboratories Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 779 (SC)*

– Section 2(ia)(m) r/w 7(i) & 16(1)(a)(i) and Food Safety and Standard Act (34 of 2006), Section 3(1)(zx), 3(1)(i) & 97 and General Clauses Act (10 of 1897), Section 6 – Prosecution & Punishment under Repealed Act – Effect – Held – Act of 1954 provides for punishment of sentence alongwith fine whereas Act of 2006 provides for punishment of fine only – Section 97 of 2006 Act protects prosecution and punishment given under the repealed Act of 1954 – No benefit can be taken under Act of 2006 in view of Section 97 of the Act of 2006 and Section 6 of General Clauses Act: *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

– Sections 2(ix)(g), 7(ii), 13(2), 16(1)(a)(ii) & 20-A – Adulteration and Misbranding – Quashment of Charge – After several years of pending litigation, on application of accused, appellant was added as an accused – Held – Appellant lost their chance to get the sample re-tested u/S 13(2) of the Act on account of respondent's negligence – Appellant ought to get such valuable opportunity for a second opinion

from Central Laboratory and claim exoneration from criminal proceedings – Impugned order quashed – Appeal allowed: *Alkem Laboratories Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 779 (SC)*

– Sections 2(ix)(g), 7(ii), 16(1)(a)(ii) & 20-A and Criminal Procedure Code, 1973 (2 of 1974), Section 315 – Misbranding – Manufacturer & Marketer – Quashment of Charge – Food article "Orange Tammy Sugarless Jelly" was found misbranded – Offence registered under provisions of the Act of 1954 – Subsequently, on an application u/S 20-A of the Act, applicant was also arrayed as accused – Challenge to – Applicant's plea that he is only the marketer and not manufacturer – Held – As per dictum of Apex Court in AIR 1971 SC 2346 and by virtue of Section 7 of the Act, applicant shall be held liable for misbranding regardless of whether he was privy to ingredients of offending food article/jelly or had any mens rea in selling the same – Further held – Satisfaction u/S 20-A of the Act can be reached on basis of material produced alongwith evidence adduced and in the present case, co-accused person has been examined u/S 315 Cr.P.C. – No ground for interference – Petition dismissed: *Alkem Laboratories Ltd. (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. 1314*

– Section 2(ix)(g) & 13(2) – Ingredient – Held – The word "adulterated" in section 13(2) would have to be read as including "misbranded" in so far as it relates to ingredient of food article and clause of Section 13 have to be complied with in its entirety: *Alkem Laboratories Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 779 (SC)*

– Section 2(ix)(k), Rule 32, 7(ii) r/w Section 16 (1)(a)(ii) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Application for quashing of proceedings in criminal case on the ground that PFA Act, 1954 is repealed by Food Safety And Standards Act, 2006 (FSSA) as per notification S.O. 1855 (E) dated 29.07.2010, whereas the alleged offence was committed on 29.11.2010 – Held – As per Section 97(4) of FSSA, no Court can take cognizance under Repealed Act after expiry of three years from the date of commencement of the Act – FSSA commenced on 29.07.2010 & PFA repealed w.e.f. 05.08.2011 – Court can take cognizance under Repealed Act till 28.07.2013 – Court rightly took cognizance on 12.08.2011 – No merits in application – Therefore, it is dismissed: *Manik Hiru Jhangiani Vs. State of M.P., I.L.R. (2016) M.P. 2405*

– Sections 7, 13(2), 16(1)(a)(i)/(ii) – See – Criminal Procedure Code, 1973, Section 482: *Abha Garg Vs. State of M.P., I.L.R. (2017) M.P. *75*

– Sections 7(i), (ii), (v) & 16(1)(a)(i), (ii) – See – Food Safety and Standard Act, 2006, Sections 49, 51, 52, 54 & 58: *Harish Dayani Vs. State of M.P., I.L.R. (2020) M.P. 226*

– Section 7(i)(iii) r/w Section 16(i)A(i) – Applicability – Applies only on articles of food meant for consumption inside the country – Not applicable to articles meant for export – Petitioner's 100% export oriented unit situated in Special Economic Zone – Food Inspector taking samples from unit without prior approval of Development Commissioner and certainly he is not a notified officer – Cognizance taken by CJM is without jurisdiction – Order set aside – Petition allowed: *Vivekanand Vs. State of M.P., I.L.R. (2016) M.P. 1838*

– Section 13(2) – Adulteration – Delay in Filing Complaint – Rights of Vendor – Held – When complaint is lodged after the expiry of shelf life of the sample, vendor is deprived of his valuable right to get analyze another sample by Central Food Laboratory – Complaint instituted after about two years of obtaining sample after expiry of shelf life of sample – No explanation showing any sufficient reasons for such delay – Proceedings quashed – Application allowed: *Ramesh Kumar Malviya Vs. State of M.P., I.L.R. (2018) M.P. *107*

– Section 13(2) – After Shelf life of the product is over, remedy under section 13(2) of Prevention of Food Adulteration Act is of no use to the accused: *Sri Prakash Desai Vs. State of M.P., I.L.R. (2016) M.P. 1227*

– Section 13(2) – Sample of Jelly taken on 03.10.08 and applicant was arrayed as accused on 01.09.15 – Applicant's plea that due to lapse of time, his valuable right provided u/S 13(2) of the Act of 1954 was lost regarding examination of second sample by Central Food Lab – Held – Present case was not of adulteration but was of misbranding, therefore right provided u/S 13(2) of the Act was not available to applicant: *Alkem Laboratories Ltd. (M/s.) Vs. State of M.P., I.L.R. (2018) M.P. 1314*

– Sections 13(2), 16(1)(A)(i) & 20(1), Criminal Procedure Code, 1973 (2 of 1974), Section 313 and Evidence Act (1 of 1872), Section 134 – Adulteration – Sole Witness – Effect – Sample of ground nut oil was found adulterated and below standard – Conviction based on sole testimony of Food Inspector – Applicant was minor at the relevant time and was sitting at his father's shop – Held – In Statement u/S 313 Cr.P.C., applicant explained his occupation as 'Oil Shop' which establishes that he was incharge of shop – No possibility of changing sample taken by Food Inspector – Further held – U/S 134 of Evidence Act, conviction can be based on testimony of sole witness, number of witnesses not required to prove any fact, quality of evidence has to be considered – Such solitary evidence of Food Inspector can be accepted without corroboration and is rightly relied on by Court below – No illegality in impugned order – Revision dismissed: *Manohar Vs. State of M.P., I.L.R. (2017) M.P. 2000*

– Section 17(1)(a) & (b) – Conviction – Company/Person Nominated – Held – Section 17 makes the Company [u/S 17(a)] as well as Nominated Person [u/S 17(b)] to be held guilty of the offence and/or liable to be proceeded and punished – Clause (a) & (b) of Section 17 are not in alternative but conjoint – In absence of Company, Nominated Person cannot be convicted or vice-versa – Trial Court convicted Nominated Person and not Company, rendering entire conviction unsustainable – Order of remand by High Court not fair as Nominated Person facing trial for more than 30 years – Complaint dismissed – Appeals allowed: *Hindustan Unilever Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 2744 (SC)*

PREVENTION OF INSULTS TO NATIONAL HONOUR ACT (69 OF 1971)

– Section 2 – National Flag – Quashment of Criminal Case – Petition against registration of criminal case u/S 2 of the Act of 1971 for insult of Indian National Flag, against petitioner/Principal of College and one Ishwarlal, Peon of College – It was alleged that at about 1:30 am (night) National Flag was found on flag post over the college building – Held – It is true that National Flag should have been taken off before sunset – Person who was incharge to do this exercise was certainly the peon who expired during pendency of this petition – No documentary evidence on record to establish that it was duty of petitioner or duty has been assigned to petitioner to hoist the flag every morning and lowering down in evening before sunset – No mens rea on the part of petitioner – Further held – Violation of Flag Code cannot amount to offence under the Act of 1971 – Criminal Case including the FIR is quashed – Petition allowed: *Vikram Datta (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 995*

– Section 2, Explanation 4(1) & 3 – Unfurling/Displaying National Flag upside down – Allegation against Collector – Held – Collector is the highest authority in District and he can't be expected to check beforehand the position of the flag – It was the job of one of his staff for which Collector cannot be held vicariously liable – No prudent person would believe that Collector would unfurl the flag upside down to jeopardize his career and reputation – Further held – When the National Anthem was going on, on being pointed out about the said mistake, Collector rightly continued with the National Anthem and did not tried to stop the National Anthem in the midway – If that was done by the Collector, he would have committed an offence u/S 3 of the Act – No case is made out – Out of such unfortunate lapse, petitioner ventured to such litigation to gain publicity or petitioner may have personal axe to grind against the Collector – To discourage filing of such petitions, cost of Rs. 10,000/- imposed on petitioner – Petition dismissed: *Anand Tiwari Vs. State of M.P., I.L.R. (2017) M.P. *46*

PREVENTION OF MONEY LAUNDERING ACT, 2002 (15 OF 2003)

– Section 4 – Offences Cognizable and Non Bailable – Offence of money laundering is punishable with rigorous imprisonment for a term not less than 3 years extending to 7 years and with fine – Section 4 read with Second Schedule of Cr.P.C. makes clear that offences under the Act are cognizable and non-bailable: *Vijay Madanlal Choudhary Vs. Union of India, I.L.R. (2016) M.P. 2492*

– Section 19 and Prevention of Money Laundering Rules, 2005, Rule 3 – Provision u/S 19 empowers specified officers to arrest a person by following prescribed procedure – Rules requires the arresting officer to forward a copy of order of arrest and the material to the adjudicating officer in a sealed cover: *Vijay Madanlal Choudhary Vs. Union of India, I.L.R. (2016) M.P. 2492*

– Section 43 – Central Government vide notification dated 01.06.2006 designated "Sessions Court" not "Sessions Judge" as Special Court for trial of offences under Section 4 – Additional Sessions Judge is covered within the meaning of Sessions Court in terms of Section 9 of Cr.P.C. – Additional Sessions Court is competent for trial of the case: *Vijay Madanlal Choudhary Vs. Union of India, I.L.R. (2016) M.P. 2492*

– Section 65 – Applicability – Section 71– Overriding effect – Under the Act, investigating officer is not Police Officer – No procedure prescribed for investigation of offence under the Act – Held – Procedure prescribed under Cr.P.C. required to be followed for investigation under the Act: *Vijay Madanlal Choudhary Vs. Union of India, I.L.R. (2016) M.P. 2492*

PREVENTION OF MONEY LAUNDERING RULES, 2005

– Rule 3 – See – Prevention of Money Laundering Act, 2002, Section 19: *Vijay Madanlal Choudhary Vs. Union of India, I.L.R. (2016) M.P. 2492*

PRINCIPLE OF ESTOPPEL

– Against Provision of Statute – Held – Principle of estoppel/waiver/ acquiescence cannot be pressed into service against provision of Statute – No "estoppels" operates against provisions of an Act – If employees have accepted retiral dues/gratuity computed by employer as per Pension Rules of 1972, that acceptance does not mean that they have waived their right to claim benefits to be computed as per Gratuity Act: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

– Applicability – Held – Petitioner cannot raise a plea of estoppel as petitioner's candidature has been cancelled before the stage of appointment in terms of the conditions of advertisement itself: *Bhagyashree Syed (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 2119 (DB)*

PRINCIPLE OF NATURAL JUSTICE

– Held – It is settled principle of law that violation of natural justice, by itself would not be sufficient to quash an order, unless and until, person is prejudiced by denial of opportunity: *Jaipal Singh Vs. State of M.P., I.L.R. (2019) M.P. *71*

– Reasonable Opportunity of Hearing – Held – Under the principle of natural justice, at least a reasonable opportunity should be afforded before criticizing the character of an individual – Reasonable opportunity is by way of holding an inquiry where specific charges of misconduct are informed to delinquent employee followed by reasonable opportunity to file reply, supply of all adverse material proposed to be used against the delinquent employee, adducing of evidence in favour or against the charges in presence of delinquent employee: *Malkhan Singh Malviya Vs. State of M.P., I.L.R. (2018) M.P. 660 (DB)*

PRINCIPLES OF PROSPECTIVE OVERRULING

– Applicability – Held – Principle of prospective overruling would not apply in respect of a judgment unless and until it is expressly so mentioned in the judgment – Further held – Where rights of party has been considered and declared, then the said proceedings cannot be re-opened on the ground that judgment on the basis of which rights were declared, has been overruled: *Sunil Raghuvanshi Vs. State of M.P., I.L.R. (2019) M.P. 1383*

PRINCIPLE OF RES-JUDICATA

– and Prospective Overruling – Applicability – Held – In earlier round of litigation, respondents were only directed to consider application of petitioner, however there was no determination of right of petitioner nor was declared entitled for appointment – Process of consideration was in progress and there was no final adjudication of right of petitioner, thus principle of res-judicata would not apply in light of non-application of principle of prospective overruling – In order to apply principle of res-judicata, there should be a finding of fact either in favour or against petitioner: *Sunil Raghuvanshi Vs. State of M.P., I.L.R. (2019) M.P. 1383*

PRISONERS (ATTENDANCE IN COURTS) RULES, M.P., 1958

– Rule 6 – See – Criminal Procedure Code, 1973, Sections 397 & 401: *Shankar Vs. State of M.P., I.L.R. (2016) M.P. *9*

PRISONERS (M.P. AMENDMENT) ACT (10 OF 1985)

– Section 31-A and Prisoners Leave Rules, M.P., 1989 – Grant of Parole – Applicability – Petition against rejection of prayer for Parole – Petitioner convicted u/S 376 (2)(g) & 506(B) IPC and sentenced for life imprisonment – Prayer rejected by respondents on the ground of an interim order passed by the Apex Court in Union of India v/s V. Sriharan whereby State Governments are restrained from exercising their power of remission to life convicts – Challenge to – Held – Apex Court has finally decided the above case whereby it is held that imprisonment of life means till end of conviction of life with or without any scope of remission – In the present case, it is clear that period of parole is always included in the period of sentence, if life convicts are released on parole, their sentence would not be reduced – Parole does not amount to suspension, remission or commutation of sentence – Respondents directed to consider application of petitioners for grant of parole under the Rules of 1989 – Petition allowed: *Vikas Bharti Vs. State of M.P., I.L.R. (2018) M.P. *29*

PRISONERS LEAVE RULES, M.P., 1989

– See – Prisoners (M.P. Amendment), Act, 1985, Section 31-A: *Vikas Bharti Vs. State of M.P., I.L.R. (2018) M.P. *29*

PRIZE CHITS AND MONEY CIRCULATION SCHEMES (BANNING) ACT (43 OF 1978)

– Section 4 & 5 – See – Criminal Procedure Code, 1973, Section 468: *Sahara India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1497*

– Section 9 – Power to Try Offences – Jurisdiction to Issue Process – Held– As per Section 9 of the Act of 1978, no court inferior to that of a Chief Judicial Magistrate shall try the offence punishable under the Act – In the present case, the CJM gravely erred in making over the case to JMFC without appreciating the provisions of the Act, which specifically forbade the trial by a Court inferior to CJM – Issuance of process by JMFC is in violation to Section 9 of the Act – Summoning order against petitioners quashed on account of lack of jurisdiction of JMFC: *Sahara India Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1497*

PROBATION OF OFFENDERS ACT (20 OF 1958)

– Section 4 & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Practice and Procedure – Maintainability of Petition – Petitioner No.1 and Petitioner No.2 were convicted u/S 325 and u/S 325/34 IPC respectively – In appeal, conviction of petitioner no.1 was maintained and conviction of petitioner no.2 was converted to one u/S 323 IPC – Sentence of petitioner no.1 was reduced to imprisonment till rising of the Court because he was a government servant, but fine amount was enhanced from Rs 500 to Rs. 3000 – They filed a revision before High Court whereby the court declined to interfere – They again filed the present petition u/S 482 CrPC alongwith an interlocutory application u/S 4 r/w Section 12 of the Act of 1958 submitting that even after making a prayer for relief under the provisions of the Act of 1958, all the courts have not considered the said provisions – Held – This court in revision filed by the petitioners have declined to interfere on merits of the case thus the relief of acquittal or the relief under the Act of 1958 shall be deemed to have been declined – Petitioners have exhausted all their remedies up to the stage of High Court and this is a second attempt before High Court by which petitioners are invoking inherent jurisdiction of Court to overturn the order passed earlier in revision by a coordinate bench of this Court, which tantamount to virtual review of a final order, which obviously is not permissible – Petition dismissed: *Tulsidas Vs. State of M.P., I.L.R. (2017) M.P. 1265*

PROFESSIONAL MISCONDUCT

– Advocate – Held – Making concessional statements without seeking instructions from client, not only amounts to misleading the Court but also amounts to professional misconduct – Counsel should not make any statement in form of undertaking, without seeking proper instructions from party: *Nirmal Singh Vs. State Bank of India, I.L.R. (2020) M.P. *11*

PROHIBITION OF SMOKING IN PUBLIC PLACES RULES, 2008

– Rules 2, 3 & 4 – See – Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Sections 3, 4, 6 & 21: *Restaurant & Lounge Vyapari Association Vs. State of M.P., I.L.R. (2016) M.P. *14*

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (32 OF 2012)

– Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 164 & 439: *Manoj Ahirwar Vs. State of M.P., I.L.R. (2017) M.P. *96*

– Section 3/4 – See – Penal Code, 1860, Sections 363, 366, 376(1): *State of M.P. Vs. Ravi @ Ravindra, I.L.R. (2017) M.P. 221 (DB)*

– Section 3/4 – See – Penal Code, 1860, Sections 363, 366, 376(2)(I): *Rabiya Bano Vs. Rashid Khan, I.L.R. (2017) M.P. 2579 (DB)*

– Section 3/4 – See – Penal Code, 1860, Sections 363, 366 & 376(2)(i): *Shiva Salame Vs. State of M.P., I.L.R. (2019) M.P. *12*

– Section 3/4 – See – Penal Code, 1860, Sections 363, 366-A & 376: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Compromise – Held – Applicant facing trial under Act of 2012 which is a special statute and any offence under Special Statute cannot be quashed on ground of compromise – What cannot be done directly, cannot also be done indirectly: *Arif Khan Vs. State of M.P., I.L.R. (2020) M.P. 1460*

– Sections 3, 4 & 6 – See – Penal Code, 1860, Section 376(2) & 506: *Sanjay Vs. State of M.P., I.L.R. (2018) M.P. 1828*

– Section 3/4 & 7/8 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12: *Vinay Tiwari Vs. State of M.P., I.L.R. (2018) M.P. 2047*

– Section 4 – See – Criminal Procedure Code, 1973, Section 311: *Shyam @ Bagasram Vs. State of M.P., I.L.R. (2018) M.P. 1805*

– Section 4 – See – Penal Code, 1860, Sections 376(2)(i), 376(2)(d), 363, 343 & 506: *Uma Uikey Vs. State of M.P., I.L.R. (2018) M.P. *69*

– Section 4 – See – Penal Code, 1860, Sections 457, 306 & 376: *Harsewak Vs. State of M.P., I.L.R. (2016) M.P. 928*

– Sections 4, 5 & 6 – See – Penal Code, 1860, Sections 302, 363, 366, 376(2)(f) & 377: *Anokhilal Vs. State of M.P., I.L.R. (2020) M.P. 1011 (SC)*

– Section 4/6 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 9 & 94(2): *Sharda Soni @ Sonu Soni Vs. State of M.P., I.L.R. (2018) M.P. 2507*

– Section 5 & 6 – See – Penal Code, 1860, Sections 302, 363, 376(2)(i) & 201: *In Reference Vs. Shyam Singh @ Kallu Rajput, I.L.R. (2019) M.P. 1301 (DB)*

– Section 5 & 6 – See – Penal Code, 1860, Section 302 & 376A: *In Reference Vs. Vinod @ Rahul Chouhtha, I.L.R. (2018) M.P. 2512 (DB)*

– Section 5/6 – See – Penal Code, 1860, Sections 363, 366 & 376-E: *In Reference Vs. Ramesh, I.L.R. (2016) M.P. 1523 (DB)*

– Section 5(i), (m) r/w Section 6 – See – Penal Code, 1860, Sections 376A, 302 & 201(II): *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Section 5(i), (m) r/w Section 6 & 42 and Penal Code (45 of 1860), Section 376 A – Alternate punishment – Conviction & sentence both u/S 376 A of IPC & Section 5(i), (m) r/w Section 6 of Act of 2012 – Whether punishment both under specified sections of IPC & Protection of Children from Sexual Offences Act is permissible in the light of provisions as enshrined u/S 42 of the Act of 2012 – Held – No, as per Section 42 of the Act of 2012, the punishment which is greater in degree either under Protection of Children from Sexual Offences Act or specified sections of IPC is to be imposed – So the sentence awarded under the Protection of Children from Sexual Offences Act set aside as the sentence awarded u/S 376 A of IPC is greater in degree: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– Section 5(m) & 6 – See – Penal Code, 1860, Sections 302, 376(AB), 363, 366 & 201: *Deepak @ Nanhu Kirar Vs. State of M.P., I.L.R. (2020) M.P. 495 (DB)*

– Section 5(n) & 6 – See – Penal Code, 1860, Sections 302, 363, 366, 376-A, 376-AB & 201: *State of M.P. Vs. Honey @ Kakku, I.L.R. (2020) M.P. 1422 (DB)*

– Section 6 – See – Criminal Procedure Code, 1973, Section 389: *Mahesh Pahade Vs. State of M.P., I.L.R. (2018) M.P. *84 (DB)*

– Section 6 – See – Penal Code, 1860, Sections 302, 376(A), (D) & 449: *Vinay Vs. State of M.P., I.L.R. (2017) M.P. 2752 (DB)*

– Section 6 – See – Penal Code, 1860, Sections 363, 366 & 376: *Babalu @ Jagdish Vs. State of M.P., I.L.R. (2020) M.P. 183*

– Section 11(1)/12 & 11(4)/12 – See – Penal Code, 1860, Sections 341, 354(D)(1)(i), 506-II & 509: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Section 29 & 30 – Presumption – Culpable Mental State – Held – Court has to presume existence of such culpable mental state of accused and he has to discharge such burden – Explanation to Section 30 is inclusive in nature – "culpable mental state" includes intention, motive and knowledge of a fact and the belief in, or reason to believe a fact: *Miss X (Victim) Vs. Santosh Sharma, I.L.R. (2020) M.P. 461*

– Section 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Determination of Age of Prosecutrix – Stage of Trial – Petitioner charged with the offence u/S 363/34, 366-a/34, & 376 IPC – After completion of trial, at the stage of final arguments, DPO filed an application u/S 311 Cr.P.C. to adduce evidence with regard to the age of prosecutrix, which was allowed – Challenge to – Held – Section 34 mandates the determination of age of minor victim child which is very vital for trial – In view of Section 34 of the Act of 2012, Court was duty bound to determine the age of the child victim – Further held – Section 311 Cr.P.C. has been enacted in order to enable the Court to find out the truth and render a just decision – The words "at any Stage of the trial" indicates that once it is found that evidence is essential for just decision of the case, witness can be called at any time before pronouncement of judgment – Time factor would not come in the way – Impugned order cannot be said to be illegal or perverse – Revision dismissed: *Umesh Kumar Vs. State of M.P., I.L.R. (2017) M.P. 1230*

PROTECTION OF HUMAN RIGHTS ACT, 1993 (10 OF 1994)

– Section 18 – M.P. Human Rights Commission – Powers – Held – Commission, during or on completion of enquiry u/S 18 of the Act of 1993 can approach the Supreme Court or High Court for such directions, orders or writs as any of these two Court may deem necessary: *Amarnath Verma Vs. State of M.P., I.L.R. (2019) M.P. 807*

– Section 18 – M.P. Human Rights Commission – Recommendations – Nature & Scope recommending recovery of compensation and initiation of departmental enquiry against petitioner – Held – Human Rights Commission directing the functionaries of State to implement its recommendations de hors the nature of power available to commission under the Act of 1993 – Recommendation may have persuasive, corroborative or suggestive value but Act of 1993 does not allow the same to be a mandate – Report submitted by Commission are mere recommendations, suggestions or proposal in nature and are not binding, as has been treated by the State – No application of mind by State authorities on the said recommendations – Such directions are contrary to object and scheme of Act, thus not sustainable in eyes of law – Impugned order quashed: *Amarnath Verma Vs. State of M.P., I.L.R. (2019) M.P. 807*

– Section 18(b) – See – Service Law: *Amarnath Verma Vs. State of M.P., I.L.R. (2019) M.P. 807*

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (43 OF 2005)

SYNOPSIS

1. Aggrieved Person

– Section 2(a) – "Aggrieved person" – There is no divorce between the parties – Wife is still in domestic relationship and therefore respondent wife would be an aggrieved person u/S 2(a) of the Act: *Babulal Vs. Smt. Premwati, I.L.R. (2017) M.P. 753*

– Section 2(a) & 2(f) – "Domestic Relationship" & "Aggrieved Person" — There is no divorce between the parties – Wife is still in domestic relationship and therefore respondent wife would be an aggrieved person u/S 2(a) of the Act – Supreme Court has held that legal relationship between husband and wife continues even after the decree for judicial separation: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

2. Appeal/Revision

– Section 29 – No revision provided in Protection of Women from Domestic Violence Act – Appeal provided u/s 29 of the Act – Protection of Women from Domestic Violence Act beneficial legislation – Converting Court has jurisdiction to hear appeal – Conversion of revision into appeal – Permissible: *Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi, I.L.R. (2016) M.P. 575*

– Section 29 and Criminal Procedure Code, 1973 (2 of 1974), Chapter 29 – *Appeal u/s 29 of Protection of Women from Domestic Violence Act – Stricto sensu* is not an appeal under Chapter 29 of Cr.P.C. – Protection of Women from Domestic Violence Act is beneficial legislation: *Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi, I.L.R. (2016) M.P. 575*

3. Domestic Incident Report

– Section 2(e) & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 190 – Domestic Incident Report – Cognizance by Magistrate – Held – Cognizance taken by Magistrate on basis of Domestic Incident Report (DIR) submitted by Protection Officer, who is a legally authorized officer, cannot be said to be unlawful – Application dismissed: *Sumit Jaiswal Vs. Smt. Bhawana Jaiswal, I.L.R. (2019) M.P. 1332*

– Section 12 (Proviso) – Whether it is obligatory to call for domestic violence report from Protection Officer or Service Provider at the time of issuance of notice, if it is not available or if report is available, then is it mandatory to consider it – Held – It is not obligatory for a Magistrate to call for or avail the report at the stage of taking cognizance and if report is available, then its consideration is obligatory even at the stage of issuance of notice or at the time of passing final order, as the case may be, affording opportunity to the other side – Application dismissed: *Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai, I.L.R. (2016) M.P. 302*

– Sections 12, 18, 19, 20 & 22 – Cognizance – Domestic Incident Report – Held – This Court has earlier concluded that Magistrate can take cognizance of the matter before calling and considering Domestic Incident Report from Protection Officer: *Amarjeet Singh Vs. State of M.P., I.L.R. (2019) M.P. *57*

4. Domestic Violence/Ingredients

– Section 3 & 12 – Complaint filed by sister against brothers for not giving share in ancestral property – Conduct of petitioners not covered within the meaning 'Domestic Violence' – Complaint quashed – Petition allowed: *Rajkishore Shukla Vs. Asha Shukla, I.L.R. (2016) M.P. 2375*

5. Interim Maintenance/Income of Parties

– Section 12 & 29 – Interim Maintenance – Grounds – Income of Wife – In a proceeding u/S 12 of the Act, on an application being filed by wife u/S 29 of the Act, the trial Court as well as lower appellate Court directed husband to pay interim maintenance to wife @ Rs. 2000 per month – Challenge to – Held – Wife herself admitted in her reply that she is working as ANM in a hospital and is getting a salary

of Rs. 11,400 per month – Salary certificate and bank pass book of wife corroborates the fact of income of wife – Further held – Interim maintenance should be awarded only where there is urgent requirement of wife to be maintained or to prevent destitution and vagrancy of woman/wife who has become used to a certain standard of living by virtue of her marriage – Trial Court as well as lower appellate court committed mistake in awarding interim maintenance – Orders passed by Courts below are set aside – Revision allowed: *Anil Vs. Smt. Veena, I.L.R. (2017) M.P. *66*

– Sections 20, 23 & 26 and Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Eligibility – Held – Wife can seek interim maintenance/ maintenance under provisions of the Act of 2005 in addition to and alongwith any other relief including the relief of maintenance u/S 125 Cr.P.C. – Parallel receipt of interim maintenance/maintenance is certainly maintainable: *Manudatt Bhardwaj Vs. Smt. Babita Bhardwaj, I.L.R. (2019) M.P. 2117*

– Section 23 – Interim Maintenance – Ex-parte Order – Held – Magistrate can pass ex-parte order u/S 23 of the Act of 2005: *Amarjeet Singh Vs. State of M.P., I.L.R. (2019) M.P. *57*

6. Limitation

– Sections 12, 18 & 31 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 & 472 – Limitation – Applicability – Held – Section 468 Cr.P.C. is applicable in relation to offences and not to application – No limitation period prescribed for application u/S 12 of the Act – Wife claiming maintenance which is a continuous cause, she cannot be debarred from it – Limitation u/S 468 Cr.P.C. is applicable only when there is a violation of protection order passed u/S 18 and consequently offence is committed u/S 31 of the Act of 2005 – Application however filed within one year, is not barred by limitation: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

7. Maintenance/Eligibility

– Sections 2(b), 12 & 20(d) – Maintenance – Eligibility – Held – The daughter/ child above the age of 18 years not entitled for maintenance under the Act of 2005 – Revision allowed: *Mohd. Laeeq Khan Vs. Smt. Shehnaz Khan, I.L.R. (2020) M.P. 721*

– Section 12 & 2(f) – Maintenance – Eligibility – Relationship in Nature of Marriage – Held – Petitioner was aware that respondent was married man with wife and children, before commencement of their relationship – Status of petitioner is that of concubine or mistress who entered into relationship not in the nature of marriage – Concubine cannot maintain relationship in the nature of marriage because such

relationship will not have exclusivity and will not be monogamous in character - "Domestic Relationship" discussed and explained – Domestic Violence Act 2005 does not take care of such relationship – Petitioner not entitled for any relief under the Act of 2005 – Petition dismissed: *Sooma Devi Vs. Ramkripal Mishra, I.L.R. (2017) M.P. 2561*

– Section 20 and Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance & Monetary Relief – Held – Supreme Court concluded that monetary relief as referred in Section 20 of the Act of 2005 is different from maintenance: *Manudatt Bhardwaj Vs. Smt. Babita Bhardwaj, I.L.R. (2019) M.P. 2117*

8. Marriage – Presumption/Rebuttal

– Section 12 – Live-in-relationship – Presumption – Rebuttal – Held – Continuous cohabitation of man and woman as husband and wife may raise presumption of marriage but the presumption drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy the presumption, Court cannot ignore them – In instant case, there is a rebuttal of presumption: *Sooma Devi Vs. Ramkripal Mishra, I.L.R. (2017) M.P. 2561*

9. Nature of Proceedings

– Section 12 – Nature of proceedings – Domestic violence per se not offence – Proceedings are quasi civil: *Yogendra Nath Dwivedi Vs. Smt. Vinita Dwivedi, I.L.R. (2016) M.P. 575*

10. Quashment of Proceedings

– Section 12 – Maintainability – Held – On 05.08.2017 wife lodged FIR u/S 498-A IPC where in her statement u/S 161 Cr.P.C., no allegation was made against A-2, 3 & 4, but later, on 13.01.2018 she filed application u/S 12 of the Act of 2005 alleging against them – Allegations are an afterthought and they have been implicated because of close relation with husband – No *prima facie* case against them – Proceedings against them is purely misuse of process of law and thus set aside – Revision partly allowed: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

11. Recovery of Arrears of Maintenance

– Sections 2(o), 12, 18, 28(1) & 31 and Protection of Women from Domestic Violence Rules, 2006, Rule 6(5) – Maintenance Order & Protection Order – Enforcement – Wife filed application u/S 31 of the Act of 2005 for recovery of arrears of maintenance amount from applicant – Bailable warrant issued – Challenge to – Held – As per Section 18 r/w Section 2(o) of the Act of 2005, order of granting maintenance is not a Protection Order and non-payment of same would not attract

Section 31 of the Act – Impugned order quashed – Further held – Rule 6(5) of Rules of 2006 provides enforcement of order of Magistrate as provided in Section 125 Cr.P.C., hence Magistrate directed to treat the application filed u/S 31 as if filed under Rule 6(5) of the Rules of 2006 and proceed giving opportunity of hearing to applicant – Application partly allowed: *Rakesh Sahu Vs. Smt. Mamta Sahu, I.L.R. (2017) M.P. 2575*

– Sections 3, 18 & 31 – Economic Abuse – Protection Order – Breach of Maintenance Order – Held – If there is any instance of domestic violence for which an affirmative or prohibitory order is passed u/S 18 of the Act of 2005, provisions of Section 31 of the Act can be invoked for breach of such order – Non –payment of maintenance allowance is also a breach of 'protection order' or 'interim protection order' – Application u/S 31 is maintainable: *Surya Prakash Vs. Smt. Rachna, I.L.R. (2017) M.P. *150 (DB)*

12. Residence Order

– Section 12 & 19 – Residence Order – Wife filed application u/S 12 and 19 of the Act against her husband Devilal and other family members submitting that they (applicants herein) use to abuse her and her unmarried daughter and they do not allow them to reside in the house and husband do not provided anything for maintenance – In reply before the Trial Court, it was submitted that house has been partitioned and Devilal sold his share to one Dharmendra and therefore now she can't make any claims in the said house – Trial Court directed that applicants should not obstruct in peaceful residence of wife alongwith her daughter in the house – Held – Wife filed application on 01.08.2011 whereas sale deed was executed on 12.06.2012 through a power of attorney – It is also not denied that Dharmendra is son of one of the applicants – Trial Court rightly held that the sale deed was a sham document purposefully created to defeat the very purpose of the application – Petition dismissed: *Babulal Vs. Smt. Premwati, I.L.R. (2017) M.P. 753*

13. Respondent/Female Member

– Section 2(q) – "Respondent" – Female Member – Wife seeking relief under the Act of 2005 against mother-in-law – Challenge to – Held – Supreme Court has recently deleted the word "male" appearing in the definition of Section 2(q) – Aggrieved person may seek remedies under the Act against female members also: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Section 12 – Complaint Against Female Members – Maintainability – Held – Apex Court concluded that remedies under Act of 2005 are available against female family members and others including non adult also: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

14. Retrospective Effect of Act

– Section 12 – Retrospective Effect of the Act – Maintainability of Application – Incidents prior to the date of coming into force of the Act will also be considered for the purpose of the Act – Application is maintainable: *Babulal Vs. Smt. Premwati, I.L.R. (2017) M.P. 753*

– Section 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Retrospective Effect of the Act – Limitation – Maintainability of Application – Incidents and conduct of the parties prior to the date of coming into force of the Act will also be considered while passing orders u/S 18, 19 and 20(1)(d) of the Act – Further held – Provisions of Section 468 Cr.P.C. are not applicable at the time of filing an application u/S 12 of the Act of 2005 – Application is maintainable: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Sections 12, 18, 22 & 3 Explanation I (iv)(a) – Order allowing application filed u/S 12, 18 & 20 of 2005 Act affirmed in appeal – Called in question on the ground that it relates to the period between 17.05.2003 and 13.07.2005, whereas, the Act came into force w.e.f. 26.10.2006 – Hence, the Act is not retrospective in operation – Held – While looking into a complaint u/S 12 of the Protection of Women from Domestic Violence Act, 2005, the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, could be taken into consideration – The situation comes within the ambit of Section 3 of the Protection of Women from Domestic Violence Act, 2005 – No interference is warranted – Revision is dismissed: *Hanif Khan Vs. Shanno Bee, I.L.R. (2016) M.P. 2355*

15. Term "Child"

– Sections 2(b), 12 & 20(d) – "Child" – Held – Term "child" clearly refers to any person below the age of 18 years, whether married or unmarried: *Mohd. Laeeq Khan Vs. Smt. Shehnaz Khan, I.L.R. (2020) M.P. 721*

– Sections 2(b), 12 & 20(d) – Interpretation of Statute – "Child" – Held – Act of 2005 is a secular statute, thus no bar on its applicability despite personal laws of the parties: *Mohd. Laeeq Khan Vs. Smt. Shehnaz Khan, I.L.R. (2020) M.P. 721*

16. Territorial Jurisdiction

– Section 12 & 27 – Territorial Jurisdiction – Held – Wife can file a petition where she temporarily resides – Wife, after dispute, living at parental home at Barely, where she can file the application: *Praveen Upadhyay Vs. Smt. Rajni Upadhyay, I.L.R. (2019) M.P. 2127*

– Section 27(1)(a) – Territorial Jurisdiction – Husband presently living in Dubai and wife living at Bhopal – As per Section 27(1)(a), aggrieved person may file an application where the person permanently or temporarily resides or carries on the business or is employed – It is undisputed that wife is presently residing with her parents at Bhopal – JMFC Court at Bhopal has jurisdiction to entertain the application – Revision dismissed: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

– Section 28 and Criminal Procedure Code, 1973 (2 of 1974), Chapter VII A – Execution of Order – Held – Section 28 of the Act of 2005 lays down that Courts shall be governed by general provisions of the Cr.P.C. – If husband is living at Dubai, wife may take recourse to provisions of Chapter VII A of Cr.P.C. to get the order executed in Dubai against husband: *Manoj Pillai Vs. Smt. Prasita Manoj Pillai, I.L.R. (2017) M.P. 1736*

17. Miscellaneous

– Sections 2(F), 2(S), 3 & 12 – See – Penal Code, 1860, Sections 498-A & 506/34: *Preeti Vs. Neha, I.L.R. (2016) M.P. 2132*

– Section 12 – See – Criminal Procedure Code, 1973, Section 468: *Hemraj Vs. Smt. Chanchal, I.L.R. (2016) M.P. *25*

– Section 12 – See – Criminal Procedure Code, 1973, Section 482: *Mukesh Singh Vs. Smt. Suni Bai, I.L.R. (2016) M.P. 1598*

– Section 12 – See – Criminal Procedure Code, 1973, Section 482: *Mukesh Singh Vs. Smt. Rajni Chauhan, I.L.R. (2019) M.P. *31*

– Section 28(2) – See – Criminal Procedure Code, 1973, Section 200: *Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai, I.L.R. (2016) M.P. 302*

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

– Rule 6(5) – See – Protection of Women from Domestic Violence Act, 2005, Sections 2(o), 12, 18, 28(1) & 31: *Rakesh Sahu Vs. Smt. Mamta Sahu, I.L.R. (2017) M.P. 2575*

PUBLIC DISTRIBUTION ORDER, M.P., 2015

– Clause 16(7) & 18 – Removal/Replacement of Salesman – Jurisdiction – Petition against order of SDO (Shop Allotment Authority) directing the society running the fair price shop, to replace the petitioner salesman – Held – Order was not made

for removal of petitioner from employment – It is true that power of replacing the salesman with a new one is not vested with the Shop Allotment Authority and such replacement certainly does not fall within the definition of 'removal' but under the generic powers vested with Shop Allotment Authority under Clause 18, he may issue directions to ensure planned distribution of essential commodities and the fair price shop/institution/ body/group/agency are duty bound to comply with the same – Order passed by SDO is not bereft of jurisdiction – Petitioner may avail remedy of appeal before Collector – Petition dismissed: *Rajendra Shrivastava Vs. State of M.P., I.L.R. (2018) M.P. *22*

PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, M.P., 2009

– Clause 11(9) & 11(11) – See – Essential Commodities Act, 1955, Section 3 & 7: *Naresh Rawat Vs. State of M.P., I.L.R. (2019) M.P. *32*

PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, M.P., 2015

– Clause 16(3) & 16(4) – Final Order – Held – Final order is not defined in Control Order 2015 but in a general sense, it means the order of cancellation of authority letter of running the fair price shop: *Deendayal Prathmik Shahkari Upbhokta Bhandar, Hata Vs. State of M.P., I.L.R. (2020) M.P. 2636*

– Clause 16(3) & 16(4) – Principle of Natural Justice – Held – Show cause notice was issued, detailed reply was filed in writing, same was considered by authority and after its consideration, final order has been passed – No violation of principle of natural justice has been followed – No prejudice caused to petitioner – Petition dismissed: *Deendayal Prathmik Shahkari Upbhokta Bhandar, Hata Vs. State of M.P., I.L.R. (2020) M.P. 2636*

– Clause 16(3) & 16(4) – Termination of Fair Price Shop – Show Cause Notice – Interpretation – Held – Clause 16(4) is continuation of Clause 16(3) and it should not be read independently – Period of show cause notice starts from date of suspension – Show cause notice to be issued within a period of 10 days from date of suspension and final order to be passed within a period of three months – Clause 16(4) does not provide any requirement to issue any further notice/second opportunity of hearing but it only elaborates the manner in which principle of natural justice has to be followed before passing final order: *Deendayal Prathmik Shahkari Upbhokta Bhandar, Hata Vs. State of M.P., I.L.R. (2020) M.P. 2636*

– Clause 16(8) – Criminal Prosecution – Opportunity of Hearing – Held – Clause 16(8) does not make it incumbent upon the Collector to afford prior opportunity

of hearing before taking a decision to initiate criminal prosecution against salesman of Fair Price Shop run by a co-operative society: *Arvind Kumar Gautam Vs. State of M.P., I.L.R. (2019) M.P. *70 (DB)*

PUBLIC DOCUMENT

– Registered Sale Deed – Held – Certified copy of registered sale deed is not a public document: *Nathu Vs. Kashibai, I.L.R. (2020) M.P. *25*

PUBLIC GAMBLING ACT (3 OF 1867)

– Sections 3, 4 & 4-A – Applicant running business of gambling (Satta Patti) – Raid – Seizure of hand written gambling slips, mobile phone, one landline telephone and Rs. 83,830/- in cash – Trial Court imposed fine u/S 3 & 4 of 1867 Act & also forfeited amount of Rs. 83,830/- – Appellate Court upheld the same – Held – Not actively engaged in the said business as no one other than applicant was present at the time of raid – No investigation regarding call details was made – Independent witness turned hostile – 'Satta Patti' neither printed nor published – Applicant previously instituted a suit for malicious prosecution against police – Random hand written figures and a few words on small stray slips of paper, without any supporting evidence can not be presumed to be gaming slips or any record or evidence of gaming or proceeds of gaming – Revision allowed – Conviction and sentence of fine set aside – Order of forfeiture of Rs. 83,830/- set aside – Applicant entitled to receive back the amount of Rs. 83,830/-: *Kailash Chand Jain Vs. State of M.P., I.L.R. (2016) M.P. 1805*

– Section 13 – See – Criminal Procedure Code, 1973, Section 360: *Sanjay Vs. State of M.P., I.L.R. (2017) M.P. *72*

PUBLIC HEALTH AND FAMILY WELFARE (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 1988

– and Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 2007 – Petitioners are Association of Doctors, Medical Officers, Dental Surgeons, Specialists and Dental Specialists – Vide order dated 26.08.2008 held entitled for Four Tier grade pay scale on completion of tenure of 6 years – Subsequently, said order was withdrawn and recovery order was issued alongwith adjustment – Challenge to – Held – Benefit of four tier grade scale of pay would be available to petitioners as per substituted Schedule 1 of the new Rules on completion of 6 yrs of service from date of initial appointment on recommendation of Screening Committee – Further held – Before passing the impugned order, neither any show cause notice was issued nor any opportunity of hearing was given – Benefit cannot be withdrawn behind their back – Order withdrawing the benefit is an unreasoned order and is contrary to Rules

of 2007 and is hereby quashed – Arrears directed to be paid within two months and if recovery already made then it be reimbursed – Petition allowed: *Ravindra Tathodi (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *161*

PUBLIC HEALTH AND FAMILY WELFARE (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 2007

– See – Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 1988: *Ravindra Tathodi (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *161*

PUBLIC INTEREST LITIGATION

– Locus – University Grants Commission Act, (3 of 1956), Section 3 & 26 and UGC (Institution Deemed To Be Universities) Regulations, 2010, Article 5 & 25 – Appointment of Vice Chancellor – Respondent No. 4 was appointed as Vice Chancellor of University – Challenge to Memorandum of Association 2014 and the said appointment made there under – Held – Petitioner in his antecedents has not given any details of work undertaken by him to uplift the education system of this country at school level or at the higher education level – Petitioner seems to be a self proclaimed social worker, a class who are only concerned with themselves and in absence of any disclosure of the nature of social work, he is involved in, cannot claim that present petition is Pro Bono – Further held – When validity of statutory provision under which a person is appointed or elected to a public office, has been challenged in a writ petition praying for a writ of quo warranto, such petitioner should not be permitted to question the validity of such statutory provisions – Petitioner has no locus to challenge the validity of Memorandum of Association 2014 – Further held – Even otherwise, Memorandum of Association being in consonance with Regulations of 2010 as amended in 2014, appointment of respondent No.4 as Vice Chancellor is justified – Petition dismissed with cost of Rs. 10,000: *Shrikrishna Singh Raghuvanshi Vs. Union of India, I.L.R. (2018) M.P. 370 (DB)*

– Principle of delay and laches – Applicability – Petition filed after delay of seven years from date of execution of agreement, for which no explanation has been offered – Principle of delay and laches is applicable to public interest litigation as well – Further held – Project has been undertaken for development of tourism and recreational amenities, so there is no element of public interest litigation – Respondents directed to complete the undertaken project as per the time schedule of agreement – Petition disposed: *Sachin Gupta Vs. The Municipal Corporation, I.L.R. (2017) M.P. *40 (DB)*

– Slaughterhouse – Closing of the slaughterhouse/shop during the Paryushan Parv festival of Jain community – In absence of any provision under the Madhya

Pradesh Municipal Corporation Act, 1956, no direction can be issued: *Jitendra Kumar Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 308 (DB)*

– *Suo Motu* – Railway Journey – Suggestions /Measures – Light signal/ sound be fixed on each bogie to alert passengers before departure of train; position of seats/berths be displayed on site/app while making reservations and size/number of doors be increased – Held – Suggestions are aspects relating to policy decisions of respondents entailing huge expenditure – Court cannot pass judicial order on such aspects: *In Reference Vs. Union of India, I.L.R. (2020) M.P. 1868 (DB)*

– ***Suo Motu*** – Railway Reservations – Lower Berth – Re-Prioritisation – Held – For allotment of lower berth in trains, Indian Railways directed to seriously reconsider the priority schedule – Pregnant women, passengers suffering from terminal illness or life threatening ailments like cancer, physically and mentally challenged persons be considered as priority No. 1, senior citizens as priority No. 2 and VVIPs as priority No. 3 – Petition disposed: *In Reference Vs. Union of India, I.L.R. (2020) M.P. 1868 (DB)*

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT (40 OF 1971)

– Section 7(3) – Leaseholder & Encroacher – Principle of Natural Justice – Held – ln the proceedings against the petitioner, reasonable opportunity of hearing was granted to him – Principle of natural justice not violated – Trial Court rightly rejected the plea of petitioner – Leaseholder is not having right over the property as vested in the owner – An encroacher cannot claim any title over the land so encroached – Order passed is a reasoned and speaking order whereby it was observed that petitioner is an encroacher – Petition dismissed: *Mahesh Kumar Jha Vs. Union of India, I.L.R. (2020) M.P. 342 (DB)*

PUBLIC/PRIVATE TEMPLE

– Ownership – Pujaris – Hereditary Succession – Held – If temple was a private temple, succession would have been hereditary and would be governed by hindu succession i.e. by blood, marriage and adoption – Each pujari in present case is not having blood relation with his predecessor pujari – When pujariship is not hereditary, temple cannot be a private temple: *Shri Ram Mandir Indore Vs. State of M.P., I.L.R. (2019) M.P. 1363 (SC)*

PUBLIC SERVICE COMMISSION (MP) (LIMITATION OF FUNCTIONS) REGULATIONS, 1957

– Regulation 6 – See – Constitution – Article 320(3): *Sunil Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 72*

PUBLIC SERVICES (PROMOTION) RULES, M.P., 2002

– Rule 4 & 6 – See – Service Law: *Vyankatacharya Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 3238*

PUBLIC TRUSTS ACT, M.P. (30 OF 1951)

– Section 2 and Civil Courts Act, M.P. (19 of 1958), Sections 2 (1), 3, 7, 15(2)(3) – Suit for declaration and permanent injunction filed directly before the Court of ADJ – Held – As per section 7(1) of the Act of 1958, the Court of District Judge is the Principal Civil Court of original jurisdiction and as per section 7(2) of the Act of 1958, the function of the District Judge can be discharged by the ADJ, if there exists a general or special order by the District Judge assigning him the said work – Whereas, in this case, there exists no general or special order, so the impugned order is set aside – According to Section 15(2) and Section 15(3) of the Act of 1958, Trial Court was directed to submit record of suit to the District Judge for appropriate orders – District Judge to pass orders to transfer the record either to appropriate Court or to any other Court of competent jurisdiction – Petition allowed: *Jai Prakash Agrawal Vs. Anand Agrawal, I.L.R. (2016) M.P. 2170*

– Section 3 & 34-A – Powers of Registrar – Delegation of Power – Held – Unless and until a separate notification u/S 34-A of the Act is issued, powers of Registrar cannot be delegated to SDO by work distribution memo – In instant case, no such notification issued – SDO had no jurisdiction to perform duties of Registrar – Matter transferred to Collector – Petition disposed: *Santosh Singh Rathore Vs. State of M.P., I.L.R. (2020) M.P. *15*

– Sections 4, 5 & 8 – Declaration for Ownership/Title – Adverse Possession – Non participation in Evidence – Adverse Inference – Held – Respondents claimed to be 'Pujari' of temple – 'Pujari' cannot claim ownership of property of temple, they will remain as 'Pujari' without any interest and title over property of temple – Respondents alternatively claimed that by virtue of adverse possession they have acquired the title, such claim itself is untenable – Claiming title on basis of ancestral property and at the same time claiming adverse possession, are mutually inconsistent – Further held – Non-entrance of respondents in witness box to prove their case as per their pleadings, are sufficient circumstances to draw an adverse inference against them – Properties mentioned at Serial No. 1 to 10 at para 11 of this judgment belong to Appellant/Trust – Appeal partly allowed: *Shri Banke Bihariji Bazar Vs. State of M.P., I.L.R. (2017) M.P. 2205*

– Sections 8, 9, & 26 (1)(c) – Application filed before Registrar, Public Trust for recording change in the entries in the Trust Register– It is not in dispute that

private respondents were not heard by the Registrar, Public Trust before passing order – There is no material that the private respondents were duly served – Opportunity of hearing was not provided to the private respondents and the Registrar, Public Trust has passed the impugned order in a most mechanical manner without considering the provisions of M.P. Public Trust Act – Order passed by Registrar of Public Trust quashed – Case remanded back to Registrar and after granting an opportunity of hearing to all parties, he shall be free to pass appropriate order in accordance with law: *Subhash Vs. Poonamchand, I.L.R. (2016) M.P. 2154 (DB)*

– Section 8(2) – Question involved – Whether provisions of Section 8 (2) of M.P. Public Trust Act, 1951 are mandatory – Held – Non compliance of said provision by the Court for long 15 years could render the proceedings before the trial court as without jurisdiction: *Trimurti Charitable Public Trust vs. Munikumar Rajdan, I.L.R. (2016) M.P. 3307*

– Section 12 – Notice to Registrar – Held – Notice is only to be given when there is likelihood of affecting any entry in the register – In the instant case, Trust was never registered during the lifetime of Birdi Bai till it was revoked, so there is no question of affecting any entry in the register, therefore application by respondent for issuing notice to Registrar has no force and is dismissed: *Manjula Bai Vs. Premchand, I.L.R. (2017) M.P. 1119*

– Section 14 – See – Constitution – Article 226: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

– Section 14 & 36(1)(a) – See – Constitution – Article 226: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

– Section 26 – Powers of Registrar – Petition filed against passing of interim injunction by the Registrar restraining the President of Trust to conduct meetings, operating bank account and to pass regulation regarding movable & immovable properties till fresh elections – Held – U/S 26, Registrar, only on application or Suo Motu can direct the trustee or himself make an application to Court to decide the issue regarding administration of public trust – Power of adjudication not granted to Registrar under this Section – Neither u/S 26 nor any other Section gives power of injunction to Registrar – Even inherent power has not been granted – Power to issue direction on such issue is only granted to the Court u/S 27(2)(F) of the Act: *Shree Maheshwari Samaj Ramola Trust Through President & Trustees Vs. Registrar of Public Trust and Sub-Divisional Officer Ratlam (M.P.), I.L.R. (2017) M.P. 816*

– Section 34-A – Delegation of Powers – Held – Unless and until a separate notification u/S 34-A of the Act of 1951 is issued, powers of Registrar cannot be

delegated to SDO by work distribution memo – In absence of such notification, SDO has no jurisdiction to perform duties of Registrar under the Act – Impugned order quashed – Petition disposed of: *Deepak Gupta Vs. State of M.P., I.L.R. (2020) M.P. *7*

– Section 36(1)(b) – See – Society Registrikaran Adhiniyam, M.P., 1973: *Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/Shitla Mata Kalyan Samiti Vs. State of M.P., I.L.R. (2017) M.P. 1078*

PUNJAB & SIND BANK (OFFICERS) SERVICE REGULATIONS, 1982 (UPDATED UPTO 31.08.2013)

– See – Service Law: *Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank, I.L.R. (2019) M.P. 379*

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RAILWAY ACCIDENTS AND UNTOWARD INCIDENTS (COMPENSATION) RULES, 1990

– Section 3(1), Part I of the Schedule – Whether the maximum amount which may be awarded for death of a person in a Railway Accident or Untoward Incident is Rs. 4,00,000/- – Held – Yes, the maximum amount of compensation of Rs. 4,00,000/- is payable on account of death of a person in Railway Accident or Untoward Incident as per the Rules of 1990: *Kujmati (Smt.) Vs. The Union of India, I.L.R. (2016) M.P. 1143*

RAILWAYS ACT (24 OF 1989)

– Section 73 and Railway (Punitive Charges for Overloading of Wagons) Rules, 2005, Rule 3 – Overloading of wagons – Dispute as to correctness of the weightment done by the Railway en route – Held – This being a disputed question of fact and can be agitated by the petitioner by way of statutory remedy provided under the Railways Act, 1989 or by filing a suit, if so advised: *S. Goenka Lime & Chemicals Ltd. Vs. Union of India, I.L.R. (2016) M.P. 1382 (DB)*

– Section 73 and Railway (Punitive Charges for Overloading of Wagons) Rules, 2005, Rule 3 – Punitive charges imposed on account of overloading of wagons – Held – The levying of punitive charges under Section 73 read with Rule 3 is dual purpose, firstly to prevent the breaking down of axles due to heavy weight and secondly, as the wagon has carried such excess load to the other end, the replacement cost of the coaches, engines, rails etc. be covered – Validity of Section 73 has already been

upheld by Apex Court – Point of challenge to demand notices can be raised by the petitioner before the Tribunal on its own merits – Accordingly Petition disposed of: *S. Goenka Lime & Chemicals Ltd. Vs. Union of India, I.L.R. (2016) M.P. 1382 (DB)*

– Section 123(2) & 124 – Bonafide passenger – Railways – No witness examined – Burden of proof – Held – Burden of proof cannot be placed on the dependants and also the fact that deceased boarded the train, so presumption would be that he had valid authority to travel: *Hariram Vs. Union of India, I.L.R. (2016) M.P. 205*

– Section 123(2) & 124 – Untoward incident – Tribunal – Finding – Case of runover – Written statement and Naksha Panchayatnama – Railways admitting that deceased fallen down from an unknown train – Held – The incident was an untoward incident – Appeal allowed: *Hariram Vs. Union of India, I.L.R. (2016) M.P. 205*

RAILWAY CLAIMS TRIBUNAL ACT (54 OF 1987)

– Section 16 – Application for compensation – Interest – Held – Appellant entitled for interest @ 7.5% p.a. from the date of filing of claim application till its final payment: *Hariram Vs. Union of India, I.L.R. (2016) M.P. 205*

– Section 17(1)(2) – Whether the Railway Claims Tribunal can condone the delay in filing the claim application u/s 13(1)(a) and (b) of the Railway Claims Tribunal Act, 1987 – Held – Yes, sub-section (2) of Section 17 of the Act of 1987 expressly empowers the Tribunal to entertain the claim application even beyond the period of limitation as prescribed u/s 17(1) of the Act of 1987, in case the applicant satisfies the Tribunal that he has sufficient cause for not making the application within the prescribed period: *Kujmati (Smt.) Vs. The Union of India, I.L.R. (2016) M.P. 1143*

– Section 23 and Civil Procedure Code (5 of 1908), Section 5 – Limitation in Appeal – Applicability of provisions of Limitation Act – Contradictory view of two single benches of High Court – Matter referred to Division Bench – Held – Claims Tribunal Act is a beneficial welfare legislation and is not a complete code in itself in respect of prescribing and providing the entire procedure for filing an appeal before High Court nor there is any specific provision in the Act which expressly excludes the provisions of Limitation Act – Provisions of Section 5 of Limitation Act would apply to filing of appeal u/S 23 of the Act of 1987 beyond the period of limitation prescribed, by virtue of provisions of Section 29(2) of Limitation Act – High Court has power to condone the delay in filing such appeal on sufficient cause being shown by appellant – AIR 2016 MP 37 Overruled – Reference answered accordingly: *Kapil Vs. Union of India, I.L.R. (2017) M.P. 1891 (DB)*

– Section 23(1),(3) & Limitation Act (36 of 1963), Sections 5 & 29(2) – Whether Section 5 of the Limitation Act would have no application to an appeal filed under sub-section 1 of Section 23 of Railways Claims Tribunal Act, 1987 – Held – Yes, the High Court has no jurisdiction to entertain said appeal beyond the stipulated period of limitation of 90 days as per Section 23(3) of 1987 Act regardless of the fact that the appellant has sufficient cause for such delay – Application for condonation of delay dismissed and consequently, appeal also dismissed: *Kujmati (Smt.) Vs. The Union of India, I.L.R. (2016) M.P. 1143*

RAILWAY PROTECTION FORCE RULES, 1987

– Rules 153, 158 & 217 – Opportunity of hearing before passing the order of issuance of fresh charge-sheet under Rule 153 in place of Rule 158 – Whether obligatory – Held – Even though the authority exercised its powers under Rule 217.3(c)(ii), it was necessary for the authority to issue a show cause notice to the appellant in accordance with rule of natural justice – Rule of natural justice has to be read in Rule 217.3(c)(ii) because by the proposed action of the appellate authority, the rights of the appellant have been adversely affected – Appeal partly allowed: *S.P. Singh Vs. West Central Railway, I.L.R. (2017) M.P. 26 (DB)*

RAILWAY (PUNITIVE CHARGES FOR OVERLOADING OF WAGONS) RULES, 2005

– Rule 3 – See – Railways Act, 1989, Section 73: *S. Goenka Lime & Chemicals Ltd. Vs. Union of India, I.L.R. (2016) M.P. 1382 (DB)*

RAJYA ANUSUCHIT JATI AAYOG ADHINIYAM, M.P., 1995

– Section 10 and Constitution – Article 226/227 – Scope & Jurisdiction – Held – Respondent Commission is not competent to issue any order/mandate to petitioner University directing to reinstate the services of its contractual employee after holding their termination to be illegal – Such order was without any competence and is thus void – Impugned order set aside – Petition allowed: *Vice Chancellor, Atal Bihari Vajpayee Hindi Viswavidyalaya, Bhopal Vs. M.P. Rajya Anusuchit Jati Aayog, I.L.R. (2019) M.P. 1824*

RAJYA SCHOOL SHIKSHA SEVA (SHAIKSHNIK SAMVARG) SEVA SHARTEN EVAM BHARTI NIYAM, M.P., 2018

– Clause 2.9.A – Held – The validity of formula contained in Clause 2.9.A

has already been examined and upheld by the Division Bench of this Court as well as by the Supreme Court – No merit in petitions, hence dismissed: *Pushpendra Burman Vs. State of M.P., I.L.R. (2020) M.P. 119 (DB)*

RAJYA SURAKSHA ADHINIYAM, M.P., 1990 (4 OF 1991)

– Sections 3, 4 & 5 – Externment Orders – Competent Authority/Officer – Held – Under the Act of 1990, there is no provision which prohibits passing an order by an officer lower than rank of District Magistrate – Act of 1990 clearly contemplate exercise of powers of District Magistrate u/S 3, 4, 5 & 6 by an Additional District Magistrate or Sub-Divisional Magistrate – Impugned order passed by High Court holding that Additional District Magistrate has no jurisdiction is not sustainable and is set aside – Appeals allowed: *State of M.P. Vs. Dharmendra Rathore, I.L.R. (2019) M.P. 960 (SC)*

– Section 3 & 5 – Externment Orders – Grounds – Held – Movements or acts of any person, should either exist in present time when opinion is being formed or should be so imminent and palpable that if preventive/remedial action is not taken, imminent danger would turn into reality – Merely because a person has criminal past cannot per se lead to a conclusion that allowing of such person to enjoy liberty of movement would be at the cost of danger to public order in present – In present case, one of heinous crime of murder registered against petitioner is of 2010, of which trial is pending, rest of offences are bailable and trivial in nature – No statement of any independent person has been recorded – No material to sustain apprehension of live danger to public order in present – Externment order not sustainable and is quashed – Petition allowed: *Shobharam Yadav Vs. State of M.P., I.L.R. (2018) M.P. *78*

– Section 5 – Externment Orders – District Magistrate passed order of externment against the petitioner – Appeal by petitioner was also dismissed by Commissioner – Challenge to – Held – District Magistrate has stated that petitioner is a habitual offender and has created group of anti social elements right from 1990 to 2009 and is continuously involved in committing violence, beating persons belonging to lower caste, committing robbery and because of this there is terror amongst general public, witnesses are not coming forward to give evidence against him for reasons of their safety of person and property – Petitioner had not appeared before District Magistrate even though opportunity was granted to him – He had not produced any order of acquittal in any criminal cases – Two conditions enumerated under Section 5(b) for passing order of externment against petitioner are satisfied – No fault with the order of District Magistrate and Commissioner – Petition dismissed: *Arvind Singh @ Pappu Vs. State of M.P., I.L.R. (2017) M.P. *76*

– Section 5(A) & (B) – Externment Orders – Delay – Objects of the Act – District Magistrate passed order of externment against petitioner – Appeal by petitioner

was also dismissed by Commissioner – Challenge to – Held – S.P. filed complaint before District Magistrate in 2013 and after examining witnesses, notice to petitioner was issued in 2017 – Sole purpose of the Adhiniyam is to act timely and effectively to initiate preventive action against a wrongdoer – District Magistrate has lost sight of the very purpose and object of the externment proceedings under the Act – Inordinate delay in passing impugned order without any explanation – Impugned order is flawed and unsustainable and is quashed – Objects and purpose of Act discussed – Petition allowed: *Parvez Khan Vs. State of M.P., I.L.R. (2018) M.P. 1401*

– Section 5(a) & (b) – Externment Orders – Grounds – S.P. submitted its report dated 18.12.2012 referring number of cases against petitioner – Collector passed externment order of petitioner in 2017 – Appeal was also dismissed by Commissioner – Challenge to – Held – Nothing is brought on record to show that petitioner "is engaged or is about to engaged" in commission of offences in proximity to earlier cases – Other offences committed by him years or months back cannot be a ground to pass externment order – No material on record to believe that witnesses amongst public are not turning up to depose against petitioner before the Court out of fear or on account of danger to person and property – No such finding is recorded by competent authority – Relying on the report of S.P. of 2012, after 4 ½ yrs, passing an externment order is without application of mind – Requirements of Section 5 (b) are not fulfilled – Impugned orders are set aside – Petition allowed: *Anek @ Anil Nageshwar Vs. State of M.P., I.L.R. (2017) M.P. 2368*

– Section 5(a) & 5(b) – Grounds for Externment – Petitioner was externed u/S 5(a) & (b) – He preferred appeal which was also dismissed – Held – For passing order under the provision of Section 5, there has to be sufficient material on record as fundamental rights of a person is involved – As per the list of 23 cases against petitioner, except 8 cases, all were registered for preventive sections u/S 107, 110 and 116 Cr.P.C. and most of the cases are old and stale – District Magistrate has only baldly stated the list of offences to reflect that petitioner is a daring habitual criminal – District Magistrate has not recorded any existence of material which shows that witnesses are not coming forward to give evidence against the petitioner by reason of apprehension regarding their safety – In absence of any such material, order u/S 5(b) cannot be passed – In the impugned order, there is no discussion of the reply or the contentions raised by the petitioner – Further held – Opportunity of hearing and application of mind by competent authority have been held to be the essential requirements for passing an order of externment or detention under the Act of 1990 – Order of externment and affirmation in appeal are unsustainable as found to be in violation of the requirements of the Act of 1990 – Order of externment passed by District Magistrate and the one passed in appeal are set aside – Petition allowed: *Istfaq Mohammad Vs. State of M.P., I.L.R. (2018) M.P. 1069*

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT (16 OF 2016)

– Sections 12, 14, 18, 19 & 71 and Real Estate (Regulation and Development) Rules (M.P.) 2017, Rules 26(2), (3) & (5) – Admissibility & Adjudication of Complaints – Authority – Held – "Admissibility" of complaint and "adjudging" the compensation are different stages – If "authority" finds that complaint is not liable to be rejected on ground of prima facie case or jurisdiction or locus standi, it shall be forwarded to Adjudicating Officer appointed u/S 71 for adjudicating compensation – Conferral of such power to examine admissibility of complaint is not inconsistent with Section 71 – Thus, Rules 26(2), (3) & (5) are not inconsistent or ultra vires to Section 71 of the Act – Petition dismissed: *Sowmya R. Vs. State of M.P., I.L.R. (2020) M.P. 1122 (DB)*

– Section 43(5) – Mandatory Provision – Held – There is no provision giving any discretion to Appellate Authority to waive mandatory provision of deposit of 30% of the penalty: *Gwalior Development Authority Vs. Nagrik Sahakari Bank Maryadit, Gwalior, I.L.R. (2020) M.P. 1384*

– Section 57 & 58 – "Orders" – Held – Perusal of Section 57 shows that only those orders are included in Section 58 which are executable as a decree of Civil Court and not all orders including interlocutory orders: *Gwalior Development Authority Vs. Nagrik Sahakari Bank Maryadit, Gwalior, I.L.R. (2020) M.P. 1384*

– Section 58 & 43(5) – Interlocutory Order – Second Appeal – Maintainability – Held – Order rejecting application u/S 43(5) of the Act is not an order executable as a decree of Civil Court, it is merely a interlocutory order – Second appeal against interlocutory order is not maintainable – Appeal dismissed: *Gwalior Development Authority Vs. Nagrik Sahakari Bank Maryadit, Gwalior, I.L.R. (2020) M.P. 1384*

REAL ESTATE (REGULATION AND DEVELOPMENT) RULES (M.P.) 2017

– Rules 26(2), (3) & (5) – See – Real Estate (Regulation and Development) Act, 2016, Sections 12, 14, 18, 19 & 71: *Sowmya R. Vs. State of M.P., I.L.R. (2020) M.P. 1122 (DB)*

RECOGNISED EXAMINATION ACT, M.P. (10 OF 1937)

– Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 438: *Pratap Singh Vs. State of M.P., I.L.R. (2016) M.P. 2357*

– Section 3 & 4 – See – Penal Code, 1860, Section 419 & 420: *Nandlal Gupta Vs. Union of India, I.L.R. (2019) M.P. 700 (DB)*

– Section 3-D(1) & (2) – See – Criminal Procedure Code, 1973, Section 438: *Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2017) M.P. 3138 (DB)*

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT (51 OF 1993)

– Section 18 – See – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 17 & 18: *Ramdev Ginning Factory (M/s.) Vs. Chief Manager, Authorized Officer, ICICI Bank Ltd., I.L.R. (2017) M.P. *11 (DB)*

– Sections 19(4), (5), (24) & (25) – Written Statement – Limitation – Held – As per the provisions of the Act of 1993, it is mandatory to file written statement within 30 days from service of summons, which could in exceptional cases or in special circumstances be extended by Tribunal by another 15 days – Petitioners being failed to file written statement within time frame prescribed, have lost their right to file written statement – Further held – Intention for expeditious disposal is implicit when Section 19(24) mandates the Tribunal to conclude proceedings within two hearings – Aims and objects of the Act of 1993 discussed – Petition dismissed: *Crest Steel & Power Pvt. Ltd. (M/s.) Vs. Punjab National Bank, I.L.R. (2018) M.P. *72 (DB)*

– Section 29 & 30 – Title of Auctioned Property – Rights of Auction Purchaser and Judgment Debtor – Held – Since the sale certificate was not issued by the authority, the said auction sale was not absolute, no vested right accrued in favour of petitioner and thus the borrower (Judgment Debtor) has the right to protect/ defend its title over the mortgaged property subject to his paying the entire dues adjudged by Tribunal – Act of 1993 aims at recovery of dues and does not foreclose the rights of the borrower – Further held – Even if the borrower, instead of taking recourse to stipulations under Rules of 1962, approaches the High Court, his right regarding the mortgaged property would not be waived – Petition dismissed: *Dinesh Agarwal & Associates (M/s.) Vs. Pawan Kumar Jain, I.L.R. (2017) M.P. 2142 (DB)*

REGIONAL RURAL BANKS (APPOINTMENT AND PROMOTION OF OFFICERS AND OTHER EMPLOYEES) RULES, 1998

– Promotion – Criteria – Held – Although Rules of 1998 do not provide for any minimum qualifying marks for interview as well as for performance appraisal,

however fixing the benchmark of minimum marks by the Selection Committee for interview and performance appraisal is permissible and it does not violate the principle of seniority-cum-merit – Candidates are required to be promoted in the order of seniority, irrespective of anyone among them having obtained more marks – Department directed to prepare a fresh select list for promotion accordingly – Impugned orders directing fresh exercise of promotion is set aside – Appeal allowed: *Shriram Tomar Vs. Praveen Kumar Jaggi, I.L.R. (2019) M.P. 1965 (SC)*

REGISTRATION ACT (16 OF 1908)

– Section 17 – Compromise Decree – Registration of – Admissibility in Evidence – At the stage of examination of defendant witness, petitioner/defendant wanted to exhibit a compromise decree passed earlier, whereby the trial Court refused on the ground that the decree was not registered – Held – Earlier suit was based on the plea of adverse possession which reflects that plaintiff (in the earlier suit) had no pre-existing title in the suit property, rather till the suit was decreed, he was a mere encroacher – In the present case, since the petitioner had no pre-existing right in the property prior to compromise decree and for the first time right was created, the compromise decree is required to be registered – No illegality in the impugned order – Petition dismissed: *Mohd. Yusuf Vs. Rajkumar, I.L.R. (2017) M.P. 617*

– Section 17 & 49 – See – Specific Relief Act, 1963, Section 34: *Akshay Doogad Vs. State of M.P., I.L.R. (2016) M.P. 217 (DB)*

– Section 17 & 49 – Unregistered document of lease – Whether unregistered document of lease granted under a statutory liability is inadmissible in evidence – Held – As the lease deed was a statutory lease granted under the Municipal Corporation Act, 1956, therefore merely because the lease was not registered, right accrued under the said lease deed that too a statutory right was not to be denied to the appellants and even otherwise execution of the said deed was admitted in evidence by the witnesses of the defendant – Therefore, the said unregistered lease deed is admissible in evidence: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Section 17 & 49 – Unregistered Sale Deed – Admissibility in Evidence – Suit for specific performance of contract – Held – Unregistered sale deed is admissible in evidence under proviso to Section 49 of the Act of 1908 – Petition dismissed: *Suhagrani Rajput (Smt.) Vs. Mukund Sahu, I.L.R. (2019) M.P. *22*

– Section 17(1)(b) & 17(2)(vi) – Unregistered Compromise Decree – Admissibility in Evidence – Held – A compromise decree comprising immovable property other than which is the subject matter of suit, requires registration – In present case, compromise decree was with regard to property which was the subject

matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi), thus did not require registration – Such unregistered compromise decree is admissible in evidence, hence Trial Court directed to exhibit the same – Impugned order set aside – Appeal allowed: *Mohammade Yusuf Vs. Rajkumar, I.L.R. (2020) M.P. 1245 (SC)*

– Section 17(1)(b) & 49 – Unregistered Document – Admissibility in Evidence – Held – A compulsorily registrable document if unregistered is inadmissible in evidence for primary purpose – In suit for partition, such unstamped instrument is inadmissible in evidence even for collateral purpose until same is impounded: *Mahendra Kumar Vs. Lalchand, I.L.R. (2019) M.P. 606*

– Section 17(2)(vii) – Lease Deed – Held – Lease deed has to be granted and executed by concerning Panchayat and not by the Government – It is not exempted from registration u/S 17(2)(vii) of the Act of 1908: *Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P., I.L.R. (2020) M.P. 2432*

– Section 32 & 34 – Presence of Parties – Held – Section 32 does not require presence of both parties to the document when it is presented for registration and in this view of the matter, presentation of Extinguishment Deed by authorized person of Society for registration cannot be faulted u/S 34 of the Act of 1908 – Requirement of presence of both the parties is not mandatory: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

– Section 35 – Powers & Functions of Registrar – Held – Role of Sub-Registrar stands discharged, once document is registered – No express provision in the Act of 1908 which empowers Registrar to recall such registration – Power to cancel registration is a substantive matter – Further held – Powers of Inspector General (Registration) is limited to do superintendence of registration offices and make rules in that behalf, even he don't have powers to cancel registration of any document which is already registered – Function of the Registering Officer is purely administrative and not quasi judicial thus he cannot decide whether document presented for registration is executed by person having title as mentioned in instrument: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

– Section 47 – Registered Document – Operational Date – Held – Date of registration of sale deed is not material but the date of execution of sale deed is material: *Sanjay Bhargava @ Raju Bhargava Vs. Smt. Munni Devi, I.L.R. (2019) M.P. 2534*

– Section 47 and Civil Procedure Code (5 of 1908), Order 14 Rule 5 – Sale Deed – Date of Execution & Date of Registration – Suit for eviction by respondent on the ground that they purchased the suit property – Suit filed on 2010 whereas sale

deed registered on 11.01.2012 – Held – Registered document shall operate from date, from which it would have commenced to operate, if no registration thereof had been required and made, and not from date of its registration – Trial Court rightly rejected application under Order 14 Rule 5 CPC – Suit maintainable – Petition dismissed: *Sanjay Bhargava @ Raju Bhargava Vs. Smt. Munni Devi, I.L.R. (2019) M.P. 2534*

– Section 49 – Sale Deed – Held – In absence of registration of sale deed, transfer of title cannot be effected – On basis of unregistered sale deed, respondents/ plaintiffs cannot claim title: *Ramayan Prasad (Since Deceased) through L.Rs. Smt. Sumitra Vs. Smt. Indrakali, I.L.R. (2019) M.P. 1707*

– Section 49 and Civil Procedure Code (5 of 1908), Section 100 – Unregistered Document – Admissibility in Evidence – Suit for specific performance of contract – Held – Although question regarding admissibility of document is a substantial question of law, but in view of Section 49 of Act of 1908, merely because agreement to sell was an unregistered document, but the same can be admitted in evidence in suit for specific performance of contract and would not be sufficient to dislodge the case of plaintiff, who has always expressed his readiness and willingness to perform his part of contract – Appeal dismissed: *Prem Narain Vs. State of M.P., I.L.R. (2019) M.P. 1428*

– Section 69 – See – Cooperative Societies Act, M.P. 1960, Section 64: *Satya Pal Anand Vs. State of M.P., I.L.R. (2017) M.P. 1015 (SC)*

REGISTRATION AND STAMP CLASS III (MINISTERIAL) SERVICE RECRUITMENT RULES, M.P., 2007

– See – Service Law: *Nanhe Singh Maravi Vs. State of M.P., I.L.R. (2017) M.P. *107*

REGISTRATION AND STAMP CLASS III (NON-MINISTERIAL) SERVICE RECRUITMENT RULES, M.P., 2007

– See – Service Law: *Nanhe Singh Maravi Vs. State of M.P., I.L.R. (2017) M.P. *107*

REGULARIZATION OF AD HOC APPOINTMENT RULES, M.P., 1986

– Rule 5 – See – Service Law: *Saiyad Ghazanafar Ishtiaque (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2142*

REHABILITATION POLICY, 2002

– Clause 29(1) – See – Land Acquisition Act, 1894, Section 41: *Hindalco Industries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2017) M.P. 1799 (DB)*

RELIGIOUS ENDOWMENT

– Temples – Title holders – Held – Dedicated property vests in the established idol as a juristic/legal person, deemed capable in law for holding property in same way as a natural person, carrying a juridical status with power of suing and being sued: *Surendra Singh Vs. Sagarbai, I.L.R. (2019) M.P. 1376 (DB)*

REPRESENTATION OF THE PEOPLE ACT (43 OF 1950)

– and Limitation Act (36 of 1963) – Applicability – Held – It is an admitted position of law that Limitation Act has no application in election petitions under the Act of 1951: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2019) M.P. 1420*

– Section 5 & 100(1)(a) – Whether failure of the returned candidate to furnish electoral roll of the constituency, where his name appears as a voter or a certified copy thereof would by itself establish that he was not qualified to take part in the election having failed to prove that he is a voter – Under section 100(1)(a), election of returned candidate is liable to be declared void if he was not qualified for the membership of Parliament or State legislature – Section 5 requires a candidate to be an elector of any assembly constituency of the State – To declare an election void u/S 100(1)(a), it has to be established that the returned candidate is not a voter of any assembly constituency of the State: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Section 8 and Criminal Procedure Code, 1973 (2 of 1974), Section 389(1) – Suspension of Conviction – Held – Rojnamcha entry makes prosecution story suspicious – Prima facie appellant has immense chance of success in appeal and can get acquittal or sentence lesser than 2 years imprisonment – Depriving her from contesting election of MLA would be injustice as per the present circumstances – Conviction suspended – Application allowed: *Shakuntala Khatik Vs. State of M.P., I.L.R. (2020) M.P. 2468*

– Section 14 & 66 – See – Constitution – Article 329: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– Section 15 – See – Interpretation of statutes: *Sanjay Ledwani Vs. Gopal Das Kabra, I.L.R. (2016) M.P. 1730 (DB)*

– Sections 33A, 36 & 83(1)(a) and Conduct of Election Rules, 1961, Rules 4 & 4A – Affidavit with Nomination Papers – Held – In case of absence of affidavit or false affidavit or affidavit with blank space is not an affidavit in the eyes of law – In this respect, contention of petitioner may be examined during trial of this case and sufficient opportunity has to be given to respondent to explain his position: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Sections 33(A), 81(3), 86 & 100(1)(d)(i) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 & Order 6 Rule 16 – Election petition – Assets and liability – Non-disclosure is no ground to set aside the election – Petition does not disclose any cause of action to be tried: *Rasal Singh Vs. The Election Commission of India, I.L.R. (2016) M.P. 1411*

– Sections 33(A), 81(3), 86 & 100(1)(d)(i) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 & Order 6 Rule 16 – Election petition – Criminal Cases – On the basis of newly inserted Section 33(A) prospective candidate is not required to disclose particulars of criminal case in which he has been acquitted or discharged or about the cases in which no notice has been issued to him or in cases where the Court has not even taken cognizance: *Rasal Singh Vs. The Election Commission of India, I.L.R. (2016) M.P. 1411*

– Sections 33(A), 81(3), 86 & 100(1)(d)(i) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 & Order 6 Rule 16 – Election petition – Improper acceptance of nomination form as the respondent has not furnished correct and complete information regarding educational qualification, criminal cases and property and assets – Held – Non-disclosure of Educational qualification – Respondent No.5 has given the details of the highest qualification i.e. B.A. and B.A.M.S. – He was not required to give details of educational qualification of primary school and college level etc: *Rasal Singh Vs. The Election Commission of India, I.L.R. (2016) M.P. 1411*

– Section 33(4) – Returning Officer to satisfy himself that candidate's name and electoral roll number is identical with the one entered in the nomination paper – If candidate is a voter from the same constituency from where he seeks election, electoral roll would be readily available with the returning officer: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Section 33(5) – Candidate a voter from other constituency – He is required to enclose alongwith the nomination or at the time of scrutiny, the electoral roll or certified copy of the same: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Sections 67A, 81 & 86 and General Clauses Act (10 of 1897), Section 9 & 10 – Election Petition – Limitation – Held – Date of declaration of result was

11.12.18 and the date of presentation of election petition was 25.01.19 – For the purpose of limitation of 45 days period, date of declaration of result has to be excluded and limitation has to be reckoned from next date i.e. 12.12.18 – Accordingly, the petition was presented on 45th day and is not barred by time – Application dismissed: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2019) M.P. 1420*

– Section 80 A and High Court of Madhya Pradesh Rules, 2008, Chapter IV, Rule 13 – Constitution – Article 225 – Election petition – Interlocutory order sent back for clarification to the High Court due to its ambiguous nature – Interregnum – Judge who passed the order retired – Clarification order was passed by Single Bench of the High Court – Preliminary objection – Lack of jurisdiction – Held – The requirement of a matter being heard by the Division Bench under Chapter IV, Rule 13(1)(b) of the High Court of M.P. Rules, 2008 is limited to cases of review, clarification or modification of only judgment, decrees and final orders, but not to interlocutory orders such as the order, of which, "Clarification" was sought due to its ambiguous nature, and even otherwise the stipulation under Chapter IV, Rule 13(1)(b) of High Court of M.P. Rules, 2008 is contrary to stipulation of Section 80 A(2) of Representation of the People Act 1951 in view of clear declaration by Article 225 of the Constitution that "any Rule shall be subject to the law made by the appropriate legislature" – Preliminary objection dismissed: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Sections 81, 86, 100 & 123 and Civil Procedure Code (5 of 1908), Order 7 Rule 11(a) – Election Petition – Maintainability – Cause of Action – Held – Respondent (returned candidate) has disclosed/furnished all property and asset details – Criminal Case against respondent was way back dismissed in 2015, three years prior to election of 2018 – No omission or violation of any statutory provision – No material facts have been alleged or substantiated by petitioner – Definition of "Corrupt Practice" and "Undue Influence" not attracted – No triable cause of action exist against respondent – Application under Order 7 Rule 11(a) CPC allowed – Petition dismissed: *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2020) M.P. 1345*

– Sections 81, 100 & 101 and Constitution – Article 226 – Maintainability – Held – U/S 81, petition can be filed challenging election of candidate on any ground mentioned u/S 100 and 101 of the Act – Petitioner not challenging election of Respondent-4 and merely praying for direction to Election Commissioner for quashment of entire election process – While entertaining petition u/S 81, Court cannot exercise powers under Article 226 of Constitution – Petition not maintainable: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Section 81 & 126, Specific Relief Act (47 of 1963), Section 34 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Grounds – Petition for violation of

Section 126 of Act of 1951 – Held – Petitioner has not challenged the election of Respondent-4 and not even filed the election results – Petition barred by Section 34 of the Act of 1963 – As no relief is claimed for declaration of result of Respondent-4 as void, petition is also not maintainable u/S 81 of Act of 1951 – Petition dismissed under Order 7 Rule 11 CPC: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Section 81(3) – Self attested copy – Provisions of Section 81(3) are mandatory in nature and the defects are not curable which provides that every copy of the election petition should be attested by the petitioner under his own signature – The copy of the election petition and annexures served on the respondent does not contain the signature of the petitioner – Petition is dismissed: *Rasal Singh Vs. The Election Commission of India, I.L.R. (2016) M.P. 1411*

– Section 81(3) & 83(2) – Verification of Documents – Held – Section 81(3) says only about the copy of petition, not about schedule or annexure – All documents filed with petition are certified copies issued by Returning Officers under his seal and signature – These are certified copies of public documents issued by public authority during discharging his official duties – Section 83(2) is not applicable: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Section 81(3) & 86(1) – Attestation – Held – Photocopy of petition discloses that there is no attestation by petitioner under his own signatures to be true copy of the petition – There is no compliance of Section 81(3) of the Act – As per Section 86(1), petition liable to be and is dismissed in limine: *Suresh Pachouri Vs. Shri Surendra Patwa, I.L.R. (2020) M.P. 413*

– Section 83 & 87 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Election Petition – Cause of Action – Held – Election petition can be dismissed at the threshold by way of application under Order 7 Rule 11 CPC if material facts lack "Cause of Action": *Rasal Singh Vs. Dr. Govind Singh, I.L.R. (2020) M.P. 1345*

– Section 83(1) – Contents of Petition – Corrupt Practice – Pleadings and Proof – Held – Allegation of corrupt practice must be clearly pleaded in petition with full particulars and to be proved by cogent and relevant evidence – No evidence is admissible without pleading in petition – Corrupt practice cannot be proved by the evidence in excess to pleadings: *Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma, I.L.R. (2018) M.P. 1472*

– Section 83(1) Proviso, Conduct of Election Rules 1961, Rule 94-A, Form 25 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Election Petition – Affidavit – Objection – Affidavit not in Form 25 and not filed at the time of presentation of the Election Petition on 20.01.2014 – Affidavit filed between 22.01.2014 and

18.06.2014, after expiry of the limitation period – Held – The Returned Candidate has only objected vide application under Order 7 Rule 11 of C.P.C. to the fact that the affidavit filed alongwith the Election Petition is not in conformity with form 25 of the Conduct Rules, 1961 & has never objected regarding the date of filing of the affidavit: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Section 83(1) Proviso, Conduct of Election Rules, 1961, Rule 94-A, Form 25 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Election Petition – Second affidavit – Returned Candidate – Objection by way of application under Order 7 Rule 11 of C.P.C. that second affidavit filed alongwith Election Petition is not in conformity with Form 25 – Arguments – Filing of second affidavit during pendency of Election Petition by Election Petitioner confirms this fact – Held – The Election Petitioner in his reply to application under Order 7 Rule 11 of C.P.C. has specifically stated that he had filed an affidavit in Form 25 at page no. 394-395 of the Election Petition – Abundant caution – If affidavit is defective – Ready to file further affidavit – Now the Returned Candidate cannot be permitted to raise such a fact in absence of appropriate pleading – Contention turned down – SLP of Election Petitioner allowed and SLP of Returned Candidate dismissed: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Section 83(1) Proviso, Conduct of Election Rules, 1961, Rule 94-A Form 25 and High Court of Madhya Pradesh Rules, 2008, Chapter VII, Rule 6(4) – Election Petition – Affidavit – Objection – Affidavit filed with the Election Petition does not bear the seal & signature of the Registrar as per Rule 6(4) of Chapter VII of the High Court of M.P. Rules, 2008 – Other pages of the Election Petition bear the seal & signature of the Registrar – Inference – Affidavit has been inserted after filing of the Election Petition – High Court – Finding – Lapse occured because nobody pointed out to the Registrar about existence of affidavit at page No. 394-395 – Held – Rule 6(4) of Chapter VII of the High Court of M.P. Rules 2008, casts a mandatory duty on the Registrar to sign & seal on each page of the Election Petition as well as the affidavit and such a mandatory duty must be performed irrespective of the fact whether somebody points out to the Registrar or not: *Ajay Arjun Singh Vs. Sharadendu Tiwari, I.L.R. (2016) M.P. 2886 (SC)*

– Section 83(1)(a) – Corrupt Practice – Material Facts – Held – Material facts not mentioned in petition as to before whom the speech was given, by whom the information about fact of speech containing provocation to volunteers for casting bogus votes was gathered by petitioner and who prepared the video of speech and what are the name of volunteers – Merely stating that respondent No. 1 made the speech does not constitute triable issue of corrupt practice: *Suresh Pachouri Vs. Shri Surendra Patwa, I.L.R. (2020) M.P. 413*

– Section 83(1)(a) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Cause of Action – Corrupt Practice – Held – There is lack of pleading of material facts required for declaration of election to be void on ground of corrupt practice – No cause of action exist for such ground – Petition not maintainable and liable to be dismissed under Order 7, Rule 11 CPC, if there is no other ground available for declaration of election to be void: *Suresh Pachouri Vs. Shri Surendra Patwa, I.L.R. (2020) M.P. 413*

– Section 83(1)(a) & 86 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – "Concise Statement of Material Facts" & "Cause of Action" – Returning Candidate/Respondent filed application under Order 7 Rule 11 CPC – Held – Petitioner mentioned entire details of his knowledge and defects in affidavit of respondent – Petition having a concise statement of material facts and discloses a triable issue or cause of action – Grounds taken by respondent in application under Order 7 Rule 11 CPC not sufficient for dismissal of petition – Application dismissed: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Section 83(1)(a) & 86 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Rejection of Plaint – Grounds where principles of Order 7 Rule 11 CPC are applicable under given circumstances and stages – Discussed & enumerated: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Section 83(1)(a) & 86 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Rejection of Plaint – Grounds where principles of Order 7 Rule 11 CPC is applicable under given circumstances and stages – Discussed & enumerated: *Radheshyam Darsheema Vs. Kunwar Vijay Shah, I.L.R. (2020) M.P. 2139*

– Sections 83(1)(a), 86, 100(1) & 123 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Material Facts – Held – Details of employees who were influenced by respondent is not provided in petition – Neither name of any employee is mentioned nor it is shown that how they affected election process in favour of respondent – Similarly, how respondent, as a Minister, misused his power and influenced voters is not mentioned – Source of information regarding expenditure of Bhagwat Katha is not mentioned, expenditures stated by petitioner is self imaginary calculation and presumption – Material facts are absent in pleadings – No triable issue found – Election petition dismissed: *Radheshyam Darsheema Vs. Kunwar Vijay Shah, I.L.R. (2020) M.P. 2139*

– Section 83(2) – Copy of Petition & Documents submitted for giving to Respondents – Attestation of – Held – Section 83(2) says only about manner of filing schedule or annexure, which provides that "any schedule or annexure to petition shall also be signed by petitioner and verified in same manner as the petition" – This

requirement is not applicable to the copies of documents/annexure submitted for giving to respondents: *Ram Kishan Patel Vs. Devendra Singh, I.L.R. (2020) M.P. 1888*

– Section 83(b) & (c) – Curable Defects – Held – Non-compliance of Section 83(b) & (c) is not fatal as they are curable and there is no provision in the Act of 1951 or in CPC that in case of any defect in compliance of Section 83(b) & (c), election petition shall be dismissed in limine: *Suresh Pachouri Vs. Shri Surendra Patwa, I.L.R. (2020) M.P. 413*

– Section 87 – See – Civil Procedure Code, 1908, Order 9 Rule 8: *Peeyush Sharma Vs. Vashodhra Raje Scindhia, I.L.R. (2016) M.P. 1984*

– Sections 98, 99(1)(a)(II) – At what stage of trial, notices are to be issued to person who have been proved at the trial guilty of any corrupt practice and who are to be named u/s 99(1)(a)(II) of the Act – Notices are to be issued during trial and not at conclusion of trial – When a witness is examined, who deposed against a particular person involving him in commission of corrupt practice then the person should be given an opportunity to cross examine the witness – After closing of evidence of petitioner and respondent, persons called by the notices should be given an opportunity to adduce their evidence in defence and finally while passing final order u/s 98 of the Act, they should be named u/s 99 of the Act: *Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma, I.L.R. (2016) M.P. 1112*

– Section 99 & 123 – Issuance of notice to Chief Minister – Bribery – When the act alleged against Chief Minister falls within the definition of sub clause (b) of clause (A) of sub Section 1 of Section 123 of the Representation of the People Act then notice be issued – No harm in issuing the notice to Chief Minister who may cross examine the witnesses produced by the petitioner who spoke against him in this petition – Notice be issued under Section 99 of the Representation of the People Act on payment of necessary process fee as per law: *Antar Singh Darbar Vs. Shri Kailash Vijayvargiya, I.L.R. (2016) M.P. 1986*

– Section 100(1) & 123 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice – Contestant & Candidate – Held – In respect of corrupt practice, term "Candidate" has been used in law – Contestant becomes a candidate only after filing his nomination – Bhagwat Katha was organized during 26.10.2018 to 01.11.2018 whereas respondent filed his nomination later on 05.11.2018, thus during the period of Katha, he was not a "Candidate" and hence cannot be considered as Corrupt Practice – No triable issue found – Election Petition dismissed: *Radheshyam Darsheema Vs. Kunwar Vijay Shah, I.L.R. (2020) M.P. 2139*

– Section 100(1)(c) – Improper rejection of a nomination itself is a sufficient ground for invalidating the election without any further requirement of proof of material

effect of such a rejection on the result of the election: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Sections 100(1)(c), 100(1)(d) & 33(5) – High Court did not keep in mind the distinction between Section 100(1)(c) and 100(1)(d) – Before setting aside election on the ground that appellant/returned candidate had not filed the electoral roll or a certified copy thereof and did not comply with the mandatory provisions of Section 33(5), High Court ought to have found whether improper acceptance of nomination had materially affected the result of election – High Court failed to determine Issue No. 6 and therefore it was not empowered to declare the election of the returned candidate as void, even if it is assumed that acceptance of his nomination was improper: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Section 100(1)(d) – An election is liable to be declared void on the ground of improper acceptance of nomination provided such acceptance has materially affected the result of the election: *Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma, I.L.R. (2017) M.P. 779 (SC)*

– Section 100(2) – Consent of Candidate – Proof – Corrupt Practice – Held – Vikram Verma is neither a candidate nor an election agent of respondent – For proving corrupt practice alleged against a third person, consent of candidate or his/her election agent is mandatory, since the same is not found in present case, election of returned candidate cannot be held void: *Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma, I.L.R. (2018) M.P. 1472*

– Section 109 & 110 – Election – Non-prosecution or abandonment is not a withdrawal – Withdrawal is positive or voluntary act – Non-prosecution or abandonment might have caused due to negligence, indifference, inaction or even incapacity or inability to prosecute – But it cannot be equated to that of withdrawal: *Peeyush Sharma Vs. Vashodhra Raje Scindhia, I.L.R. (2016) M.P. 1984*

– Section 117 – See – Municipalities Act, M.P., 1961, Sections 20(3)(ii) & 26: *Kanchan Khattar (Smt.) Vs. Rakesh Dardwanshi, I.L.R. (2016) M.P. 1504*

– Section 123 & 123(4) – Corrupt Practice – Proof/Evidence – Supreme Court has held that a charge u/S 123 of the Act of 1951 must be proved by clear and cogent evidence as a charge for criminal offence – Charge of corrupt practice cannot be proved by preponderance of probabilities but Court is required to satisfy that there is evidence to prove the charge beyond reasonable doubt – In the instant case, alleged statements that "Gods do not sit in High Court" & "that main points were left out" – Mere criticism of judgment of High Court in public speech shall not tantamount to corrupt practice as defined u/S 123 of the Act – Even statement "that he will capture

the bhoot and bury it in the village where petitioner resides" does not prima facie suggest that this statement of fact is based upon past event within meaning of Section 123(4) relatable to personal character or conduct of petitioner – It was a mere conjecture and cannot tantamount to corrupt practice as per the Act – Provisions u/S 123(4) does not accept the doctrine of constructive knowledge – An element of mens rea is a necessary ingredient of such alleged corrupt practice – Petition dismissed with cost of Rs. 1,00,000/- payable to respondent: *Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma, I.L.R. (2018) M.P. 1472*

– Section 123(2)(a)(i) & 7(d) – Corrupt Practice – Allegations against respondent, a returned candidate from BJP regarding use of corrupt practice during election campaign – Held – As per conversation transcript produced by petitioner, there is nothing which suggest that respondent pressurized police personnel to register counter case against congressmen – It is also not proved beyond reasonable doubt that on behest of respondent, gunshot was fired on persons campaigning for Congress Party – Independent videographer who alleged that ASP removed memory card from his camera, did not complaint/report the matter to election commission or to media either – His statement cannot be relied upon – No documentary evidence to support the incident – None of the issues proved against respondent – Petition dismissed with cost: *Abhay Singh Vs. Rakesh Singh @ Ghanshyam Singh, I.L.R. (2018) M.P. 1940*

RESERVE BANK OF INDIA ACT (2 OF 1934)

– Section 45(L) – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 13(2) & 17: *Kesar Multimodal Logistics Ltd. (M/s.) Vs. Union of India, I.L.R. (2018) M.P. 1652 (DB)*

RESERVE BANK OF INDIA, MASTER CIRCULAR

– Clause 2.1.3(c) – "Willful Defaulter" – Held – Bank paid amount to foreign exporters for purchase of machinery by petitioner – He is legally bound to repay this amount to bank even if loan or fund was not directly disbursed in petitioner's current account but it was directly paid to exporters on behalf of petitioner – Relationship of lender and borrower established – Since petitioner defaulted in repayment of the same, even it has the capacity to pay, he was rightly declared "Willful Defaulter" under Clause 2.1.3(c) of Master Circular: *Revati Cements Pvt. Ltd. Vs. State Bank of India, I.L.R. (2019) M.P. *43*

– Clause 2.1.3(c) & 3(b) – "Willful Defaulter" – Opportunity of Hearing – Advocate – Identification Committee is neither a Court nor a Tribunal – Borrower is not having a right to be represented through lawyer/counsel – RBI provided double

check system before declaring any unit as "Willful Defaulter" – Since "Review Committee" has affirmed the stand of "Identification Committee", thus opportunity of hearing is not required: *Revati Cements Pvt. Ltd. Vs. State Bank of India, I.L.R. (2019) M.P. *43*

REVENUE BOOK CIRCULAR

– Part I no.4 – Applicability – Held – Petitioner cannot be thrown out of his property by an executive action – Petitioner is in possession of land since 1946 as Bhumiswami and is not guilty of transgression of law of the land in the present case – Revenue Book Circular has no application in the present case: *The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P., I.L.R. (2017) M.P. 1063*

REVIEW

– Scope – It is the settled position that review is invoked only if there is any error apparent on the face of record and not on basis of the allegations: *Brijpal Vs. Mrs. Munni Bai, I.L.R. (2016) M.P. 3329*

REWA STATE LAND REVENUE AND TENANCY CODE, 1935

– Section 44 – Lease – Competent Authority – Held – At the relevant period, u/S 44 of the Act, Pawaidar was empowered to issue the lease – Predecessors of Appellants was validly granted lease: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 44, Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), Section 26 & 28 and Land Revenue Code, M.P. (20 of 1959), Section 158(1)(d)(i) – Bhumiswami Rights – Accrual of – Held – After abolition of Jagirdari system by Act of 1952, appellants who were tenants of jagirdars were deemed to be "Pattedar Tenant" – After coming into force of Code of 1959, all the "pattedar Tenant" who were in possession of the land became "Bhumiswami" u/S 158(1)(d)(i) of the Code: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 44, Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), Section 26 & 28 and Land Revenue Code, M.P. (20 of 1959), Section 158(1)(d)(i) – Bhumiswami Rights – Appreciation of Evidence – Held – Oral and documentary evidence establishes that father of respondent/plaintiff has abandoned the suit properties, pursuant to which auction was held by Pawaidar and lease was validly issued by illaqedar in favour of Gaya Din (Predecessors of Appellants/ defendant) and they were in continuous possession of suit properties – Report of R.I.

also states that patta was granted to Gaya Din – Order of Commissioner also establishes that interpolation in revenue entries were made by plaintiffs in connivance with patwari – First Appellate Court and High Court erred in not relying on these documents – Impugned judgments set aside – Plaintiff suit was rightly dismissed – Appeal allowed: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 57(4) and Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (3 of 1955), Section 149, 151(2) & (3) – Gairhaqdar Tenant – Patta – Held – A gairhaqdar tenant cannot get patta of "Tank" u/S 57(4) of the Code of 1935 – Similarly, right of pattedar tenant shall not accrue or deemed to have accrued in respect of a Tank – Patta of this land cannot be granted u/S 151 of Act of 1953: *Ramakant Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2699*

RIGHT TO CHILDREN OF FREE AND COMPULSORY EDUCATION ACT (35 OF 2009)

– and National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) – Minority Institutions – Applicability of Provisions of Act of 2009 on Minority Institutions – Held – Provisions of Act of 2009 are not applicable to Minority Institutions – Respondents directed to remove/delete the name of school from portal of RTE (Right To Education) and confer all rights to petitioner society under the Act of 2004: *Shanti Educational Society Vs. State of M.P., I.L.R. (2019) M.P. 1655*

– Object – Held – Right of education under the Act of 2009 is not to protect the teachers but to grant education to students – Primary object is that student should study with the best possible teachers – Directions issued to State for appointment of teachers in vacant posts: *Saurabh Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 2845 (DB)*

– See – School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, M.P., 2018, Rule 2(k), 8(1)(g) & 11: *Saurabh Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 2845 (DB)*

– Section 6 and Constitution – Article 21(A), 45 & 51(A) – Petitioners are Aided Educational Institution – Getting Grant-in-Aid from the State Government – Establishment of new primary schools in the same area by the State/local bodies challenged – Held – As per Article 21(A) & 45 of the Constitution, it is a constitutional mandate and duty on part of the Welfare State to provide free & compulsory education to all children of the age of six to fourteen years – So Section 6 of Right to Children of Free and Compulsory Eduction Act 2009 does not become a hurdle for establishment

of such institutions – Impugned order by no stretch of imagination infringes the right of petitioner to impart education – Petition dismissed with cost of Rs. 5000/-: *Aided Primary School, Rajgarh Vs. State of M.P., I.L.R. (2016) M.P. 2159*

– Section 25 – Pupil-Teacher Ratio – Held – A teacher does not have any justiciable right to successfully assail his transfer solely on ground that the same cause disturbance to pupil-transfer ratio prescribed in 2009 Act – Breach of pupil teacher ratio may confer a justiciable right to student but not to teacher because Act of 2009 is children-centric and not teacher-centric – Appeal dismissed: *Devendra Rajoriya Vs. State of M.P., I.L.R. (2020) M.P. 665 (DB)*

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT (30 OF 2013)

SYNOPSIS

1. Applicability of Act

– Section 24(1) – Applicability – As no award has been passed in proceedings initiated under Act 1894, therefore, all provisions of Act, 2013 would apply for determination of compensation: *Rajaram Vs. State of M.P., I.L.R. (2016) M.P. 1005*

– Section 24(1)(b) – Interim Order of Court – Effect – Held – In case award has been passed within window period of 5 years excluding the period covered by an interim order of Court, then proceedings shall continue as per Section 24(1)(b) under the Act of 1894 as if it has not been repealed: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 24(1)(b) & 24(2), proviso – Applicability of Proviso – Held – Proviso to Section 24(2) is to be treated as part of Section 24(2) and not a part of

24(1)(b): *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

2. Applicability/Pending Proceedings

– Section 24(2) – Applicability – Cause of Action – Held – Section 24(2) does not give rise to a new cause of action to question legality of concluded proceedings – Section 24 applies to a proceeding pending on date of enforcement of Act of 2013 – It does not revive stale and time-barred claims and does not re-open concluded proceedings nor allow landowners to question legality of mode of taking possession to re-open proceedings or mode of deposit of compensation in treasury instead of Court to invalidate acquisition: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

3. Deemed Lapse of Proceedings

– Section 24(2) – Deemed Lapse of Proceedings – Computation of Period – Held – Provisions of Section 24(2) providing for deemed lapse are applicable in case authorities, due to their inaction failed to take possession and pay compensation for 5 years or more before the Act of 2013 came into force, in a pending proceedings as on 01.01.2014 – Period of subsistence of interim orders passed by Court has to be excluded in computation of 5 years: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 24(2) – Deemed Lapse of Proceedings – Held – Deemed lapse u/S 24(2) takes place where due to inaction of authorities for five years or more prior to commencement to said Act, possession of land has not been taken nor compensation has been paid – In case possession has been taken and compensation has not been paid, then there is no lapse – Similarly, if compensation paid and possession not taken then also there is no lapse of proceedings: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

4. Jurisdiction of Civil Court

– Section 63 – Jurisdiction of Civil Court – Suit for Declaration of Title and Permanent Injunction – Held – As per the definition of Section 63, the civil suit in respect of the land under acquisition is barred: *Dilip Buildcon Ltd. (M/s.) Vs. Ghyanshyam Das Dwivedi, I.L.R. (2018) M.P. 2502*

5. Lapse of Proceeding

– Section 5A & 24 – Land was acquired under Scheme no. 97 for construction of Ring Road – Later on Scheme no. 97 was held to be illegal, inoperative and was also declared lapsed by order passed in M.P. No. 268/91 – Pursuant to

same, State Government issued direction on 20.12.94 whereby 8.023 hct. land was released from Scheme no. 97 – Thereafter impugned order was issued on 12.10.2012 reviewing earlier order dated 20.12.1994 without issuing show cause notice to the petitioners – Held – Since the award was passed on 26.02.1991 before more than 5 years – Land acquisition proceedings deemed to have lapsed because neither possession of the land has been taken nor compensation has been paid – Possession still rests with the petitioner – Respondent Indore Development Authority is directed to consider application regarding issuance of No Objection certificate confirming release of land from Scheme no. 97 – Petition is allowed: *Shwetank Grih Nirman Sahakari Sanstha Maryadit Vs. State of M.P., I.L.R. (2016) M.P. 93*

– Section 24(1)(a) – Award & Compensation – Held – U/S 24(1)(a), in case award is not made as on 01.01.2014, i.e. the date of commencement of Act of 2013, there is no lapse of proceedings – Compensation has to be determined under provisions of Act of 2013: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 24(2) – Lapse of Proceedings – Word "or" & "and" – Conjunctive/ Disjunctive – Held – Collation of words "or" can be meant in conjunctive sense where the disjunctive use of the word leads to repugnance or absurdity – Word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and" – Collation of words used on Section 24(2), two negative conditions are prescribed, thus if one condition is satisfied, there is no lapse of proceedings: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

– Section 24(2) and Land Acquisition Act (1 of 1894), Section 17(1) – Possession under Urgency – Lapse of Proceedings – Held – Where no award is passed and possession has been taken in urgency u/S 17(1) of old Act of 1894, there is no lapse of entire proceedings but only higher compensation would follow u/S 24(1)(a) of Act of 2013 even if payment has not been made or tendered under the old Act – Provision of lapse u/S 24 only available when award is made but possession not taken within five years nor compensation paid: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

6. Non-Payment of Compensation/Effect

– Section 24 and Land Acquisition Act (1 of 1894), Section 31 – Non-payment of compensation – Although Board had deposited the amount of compensation with Collector and possession was taken, however, there is nothing on record to show that the amount has been paid to the beneficiaries – No material to show that the amount was deposited in the Court as per Section 31 of the Act, 1894 where the proceedings u/s 18 of Act, 1894 were maintainable – Proceedings stood lapsed in view of Section

24 of Act, 2013 – Writ Appeal allowed: *Purushottam Lal Vs. State of M.P., I.L.R. (2016) M.P. 713 (DB)*

– Section 24(2), proviso and Land Acquisition Act (1 of 1894), Section 31(1) – Non-Deposit of Compensation – Lapse of Proceedings – Held – In case a person has been tendered compensation u/S 31(1) of old Act, it is not open for him to claim that acquisition has lapsed u/S 24(2) due to non-payment or non-deposit of compensation in Court – Obligation to pay is complete by tendering the amount – Landowners who refused to accept compensation or who sought reference for higher compensation, cannot claim the proceedings to be lapsed u/S 24(2) of Act of 2013: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

7. Term "Paid"

– Section 24(2) and Land Acquisition Act (1 of 1894), Sections 31, 32, 33 & 34 – Paid – Meaning – Held – For the purpose of Section 24(2) of the Act of 2013, the word 'Paid' occurring therein would mean that the compensation amount has been paid to the Land owners or deposited in the Court: *Parasram Pal Vs. Union of India, I.L.R. (2016) M.P. 2696*

– Section 24(2), proviso and Land Acquisition Act (1 of 1894), Sections 4, 31 & 34 – Determination of Compensation – Expression "Paid" – Held – Expression "paid" in main part of Section 24(2) does not include a deposit of compensation in Court – Consequence of non-deposit is provided in proviso to Section 24(2) in case not deposited for majority of land holdings, then all beneficiaries (landowners) as on date of notification u/S 4 of old Act shall be entitled to compensation as per Act of 2013 – In case obligation u/S 31 of old Act has not been fulfilled, interest u/S 34 can be granted – Non-deposit of compensation in Court does not result in lapse of proceedings – In case of non-deposit for majority of holdings for 5 years or more, compensation under Act of 2013 has to be paid to landowners as on date of notification for acquisition u/S 4 of Old Act: *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

8. Term "Possession"/Mode of Possession

– Section 24(2) – Possession – Meaning – Held – For the purport of Section 24(2) of the Act of 2013, the word 'Possession' would mean the Actual Physical Possession: *Parasram Pal Vs. Union of India, I.L.R. (2016) M.P. 2696*

– Section 24(2) and Land Acquisition Act (1 of 1894), Section 16 – Vesting of land – Mode of Taking Possession – Held – Mode of taking possession under old Act and as contemplated u/S 24(2) is by drawing of inquest report/memorandum – Once award is passed on taking possession u/S 16 of old Act, land vests in State,

there is no divesting provided u/S 24(2) of Act of 2013, as once possession has been taken, there is no lapse u/S 24(2): *Indore Development Authority Vs. Manoharlal, I.L.R. (2020) M.P. 2179 (SC)*

9. Miscellaneous

– Section 24(2) – See – Land Acquisition Act, 1894, Sections 4, 6, 11 & 18: *Shushila Bai Vs. State of M.P., I.L.R. (2017) M.P. 2954*

– Section 24(2) – See – Land Acquisition Act, 1894, Section 18: *Mayaram Vs. State of M.P., I.L.R. (2017) M.P. *105*

RIGHT TO INFORMATION ACT (22 OF 2005)

– Section 2(J) – Definition – "Right to information" means the right to information accessible under this Act, which is held by or under the control of any public authority – Purpose of Right to Information Act is to provide information which are kept in form of document or otherwise by any Public Authority – This provision does not override the provisions of Evidence Act: *Antar Singh Darbar Vs. Shri Kailash Vijayvargiya, I.L.R. (2016) M.P. 1986*

– Section 2(j) – See – Evidence Act, 1872, Sections 63 & 65: *Narayan Singh Vs. Kallaram @ Kalluram Kushwaha, I.L.R. (2016) M.P. *6*

– Section 20 & 21(1) – Penalty – Liability – Held – Public Information Officer can keep staff for assistance but it is duty of Public Information Officer to receive application and then instruct subordinate officers to do ministerial work to provide information – Officer should not solely depend upon staff and also cannot take a defence that staff/subordinates did not perform their duty to provide information – Commission rightly held the officer guilty of not providing information within time: *Pushpendra Sharma (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 113*

– Section 20 & 21(1) – Penalty – Quantum – Maximum penalty of Rs. 25,000 imposed – Held – Petitioner has retired from service and Commission has not assigned any reason in the order for imposing maximum penalty – No malafide intention revealed on part of petitioner – No incorrect, incomplete or misleading information provided – Case of non-supply of information within 30 days – Maximum penalty which can be imposed would be @ Rs. 250 for 30 days – Penalty reduced to Rs. 15,000 – *Petition partly allowed: Pushpendra Sharma (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 113*

RIGHTS OF PERSONS WITH DISABILITIES ACT (49 OF 2016)

– Section 34 – Examination – Reservation for Visually Challenged Candidate – Examination for post of Civil Judge Class II – No reservation provided for visually challenged candidates – Challenge to – Held – Section 34 of the Act of 2016, makes it mandatory for every appropriate Government to appoint in every Government establishment not less than 4% of total vacancies to be filled with for disabled persons, of which 1% is meant for blindness and low vision category – Advertisement without providing for reservation for visually challenged candidates is contrary to Section 34 of the Act – Reservation can only be denied if any Government establishment is exempted from provisions of the Act by the Chief Commissioner or the State Commissioner – In absence of such exemption, High Court was bound to reserve post for such candidates – Further held – Vide Notification of Government of India, the post of Judicial Magistrate has been identified as one which can be filled by such candidates – Selection not yet finalized – Respondents directed to conduct special written examination for petitioner – Petition allowed: *Rashmi Thakur Vs. High Court of M.P., I.L.R. (2018) M.P. 1616 (DB)*

ROAD TRANSPORT CORPORATION ACT (64 OF 1950)

– Service Regulation, No. 59 – Age of Superannuation – Held – Division Bench of this Court considering Service Regulation No. 59 had concluded that employee could be retired after attaining age of 58 years – Corporation had option to retain an employee upto age of 60 years, but no vested right is created in favour of employee to continue upto 60 years – Petition dismissed: *Ashutosh Pandey Vs. The Managing Director, MPRTC, I.L.R. (2020) M.P. 888 (DB)*

RULES AND ORDERS (CRIMINAL), M.P.

– Rule 175 to 179 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/20(b)(ii)(B) & 31: *Madhav Prasad @ Maddu Gupta Vs. State of M.P., I.L.R. (2018) M.P. 2494 (DB)*

RULES OF BUSINESS OF THE EXECUTIVE, GOVERNMENT OF M.P.

– Rule 13 – See – Constitution – Article 166(i), 166(2), 166(3) & 226: *State of M.P. Vs. Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore, I.L.R. (2020) M.P. 2538 (DB)*

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SAHAYATA UPKRAM (VISHESH UPABANDH) ADHINIYAM, M.P. (32 OF 1978)

– Section 3 – Notification issued under section 3 is applicable on "other legal proceedings" which includes winding up proceedings – Act of 1978 in pith and substance falls under concurrent list, therefore Article 254(2) will be attracted – It will prevail in the state even if there exists some repugnancy of earlier made law by parliament: *Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd., I.L.R. (2016) M.P. 829*

– Section 5 – Respondent company seeking stay on winding up proceedings – Based on notification issued by State Government u/s 3 of the Act declaring respondent/company as relief undertaking for one year – Held – Notification issued is within jurisdiction – Illegality of notification cannot be examined in collateral proceedings, proper remedy is to approach writ Court – Winding up proceedings stayed for one year from the date of notification – Notification u/s 3 alone without issuing notification u/s 4 will not effect on orders already passed in winding up proceedings – Respondent is directed to give inspection of books of accounts and records to inspecting officer – Application allowed: *Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd., I.L.R. (2016) M.P. 829*

SALE OF GOODS ACT (3 OF 1930)

– Sections 31, 45 & 46 – See – Criminal Procedure Code, 1973, Section 482: *Antim Dubey Vs. State of M.P., I.L.R. (2018) M.P. 1588*

SAMVIDA SHALA SHIKSHAK SHRENI-III PATRATA PARIKSHA-2008

– Chayan Avam Pariksha Sanchalan Niyam, M.P. – Rounding off of the marks from 39.58 to 40 marks for the purpose of becoming eligible to participate in the further selection process – Held – Admittedly in the present case the rules of examination contemplates that a candidate should get 40% marks in both the groups to be eligible to participate in the further selection process – There is no provision in the rule which permits for rounding off or granting of grace marks to a candidate – Same is not permissible: *Sushil Kumar Sharma Vs. M.P. Professional Examination Board, I.L.R. (2017) M.P. *16 (DB)*

SCHEDULED CASTES & SCHEDULED TRIBE ORDERS (AMENDMENT) ACT (108 OF 1976)

– Section 4, Second Schedule Part VIII – See – Panchayat Nirvachan Niyam, M.P. 1995, Rule 40-A: *Vidhya Manji (Smt.) Vs. M.P. State Election Commission, I.L.R. (2016) M.P. 1876*

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT (33 OF 1989)

– Section 3(1)(r) – Suicide Note – Admissibility in Evidence – Held – Averments in suicide note with regard to calling the deceased by referring to his caste is not admissible in evidence because no prima facie offence u/S 306 IPC is made out – Suicide note cannot be read as evidence in absence of question of death of deceased: *Shama Parveen Beg Vs. State of M.P., I.L.R. (2018) M.P. 1540*

– Sections 3(1)(r), 3(1)(s) & 3(2)(va) – See – Criminal Procedure Code, 1973, Section 228: *Bablu @ Rameshwar Prasad Vs. State of M.P., I.L.R. (2018) M.P. *101*

– Sections 3(1)(r), 3(1)(s) & 3(2)(va) – See – Criminal Procedure Code, 1973, Section 482: *Atul Dubey Vs. State of M.P., I.L.R. (2018) M.P. 2568*

– Sections 3(1)(r), 3(1)(s) & 3(2)(v-a) – See – Criminal Procedure Code, 1973, Section 482: *Sushant Purohit Vs. State of M.P., I.L.R. (2019) M.P. 944*

– Section 3(1)(r) & 18 and Criminal Procedure Code, 1973 (2 of 1974), Sections 41-A, 41-B, 41-C, 41-D & 438 – Anticipatory Bail – Held – Accusation reveals a prima facie case u/S 3(1)(r), therefore statutory bar u/S 18 of the Act of 1989 comes in way to this Court to grant anticipatory bail but the mandatory procedure prescribed in Sections 41-A, 41-B, 41-C and 41-D Cr.P.C. would apply with full vigor and the preconditions of Chapter V Cr.P.C. shall have to be satisfied before extreme step of arrest can be taken – Trial Court is directed that (i) police may resort to extreme step of arrest only when same is necessary and if appellants fail to co-operate in investigation. (ii) appellants should first be summoned to cooperate in investigation, and if they co-operate then occasion of their arrest should not arise: *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Section 3(1)(r) & (s), Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Constitution – Article 226 – Anticipatory Bail – Judicial Review – Provisions of anticipatory bail u/S 438 Cr.P.C. stands completely excluded qua an offence under the Act of 1989 – Any judgment/ order/direction of any Court of law cannot be passed

granting anticipatory bail – However, power of judicial review under Article 226 of Constitution which forms part of the basic structure of Constitution is always available: *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Section 3(1)(s) – Ingredients – Held – Allegations prima facie reveals that abusive words were uttered by appellants and name of caste of victim was taken in derisive manner in public view – Essential ingredients of offence u/S 3(1)(s) made out especially when offence occurred during post amendment era: *Mangaram Vs. State of M.P., I.L.R. (2019) M.P. 435*

– Section 3(1)(S) & 3(2)(v-a) – Quashment of Proceedings – Grounds – Validity of Caste Certificate – Held – Prosecution has produced caste certificate of complainant whereby she was a member of Scheduled tribe community – After marriage with person of muslim religion whether she would be deemed to be a member of ST community or not, cannot be decided here – A State Level Screening Committee is only having jurisdiction to decide the matter – Proceedings cannot be quashed on this ground: *Sushant Purohit Vs. State of M.P., I.L.R. (2019) M.P. 944*

– Section 3(1)(w)(i), Penal Code (45 of 1860), Section 354-A and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds – Held – Appellant and complainant working under CMHO Shivpuri – Date of incident is 01.08.2017 whereas appellant was transferred to Sagar and was relieved from office on 14.07.2017, thus appellant was not at the helm of affairs at Government Hospital Shivpuri on date of incident – FIR lodged on 19.05.2018 after delay of about 10 months – Delayed FIR is a material fact – Prima facie, offence not made out – Appellant, a government servant and his arrest may bring adverse departmental proceedings prejudicial to his interest – Matter can be investigated without causing arrest – Anticipatory bail granted with conditions – Appeal allowed: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 3(1)(W)(ii) & 3(2)(V) – See – Penal Code, 1860, Sections 376(2)(N), 342, 506 & 190: *Ramkumar Vs. State of M.P., I.L.R. (2018) M.P. 2254*

– Section 3(1)(w)(ii) & 3(2)(v-a) – See – Juvenile Justice (Care and Protection of Children) Act, 2015 , Section 9 & 94(2): *Sharda Soni @ Sonu Soni Vs. State of M.P., I.L.R. (2018) M.P. 2507*

– Section 3(1)(w)(ii) & 14-A(2) – See – Penal Code, 1860, Sections 363, 366-A & 376: *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 3(1)(X) – Calling a member of the Scheduled Caste as 'Bedia' with an intent to insult or humiliate him in a place within public view is certainly an offence u/S 3(1)(X) of the Act of 1989 – No error committed by the lower Court – Petition dismissed: *Uttam Chand Verma Vs. State of M.P., I.L.R. (2017) M.P. 1519*

– Section 3(1)(10) – Dispute had occurred regarding farming of land by the complainant party – The mens-rea to insult or humiliate, and the act to be done within full public view, is missing and the only intention of the accused seems to be removing the encroachment and possession of the complainant parties – Charge framed by trial court is set aside: *Banshilal Vs. State of M.P., I.L.R. (2016) M.P. 1198*

– Section 3(1)(x) – Word "Adiwasin" – Revision against framing of charge u/S 3(1)(x) of the Act of 1989 – Held – Petitioner insisted on joining of his relative as Aanganwadi Worker – Victim, discharging her duties as Project officer asked for certain requisite documents which enraged petitioner who abused her and uttered the word "Adiwasin" – The word itself does not reflect any intention of insulting victim just because she belongs to SC/ST community – Insult and intimidation was against Project Officer and not against member of SC/ST community to which victim belongs – Prima facie offence not made out – Further held – Expression "Adiwasin" cannot be termed as abusive word, it means a female adiwasi or a female member of ST community, beyond which no other meaning deserves to be ascribed – Charge framed against petitioner under provisions of Act of 1989 is untenable and is set aside – Revision allowed: *Monu @ Saurabh Kumar Chaturvedi Vs. State of M.P., I.L.R. (2018) M.P. 1565*

– Section 3(1)(x), Penal Code (45 of 1860), Sections 294, 323, 506 & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Subsequent Addition of Charge – Offence registered against applicant u/S 294, 323, 506 & 34 IPC – Later, additional charge u/S 3(1)(x) of the Act of 1989 was added – Challenge to – Held – Charge sheet reveals that supplementary statement was recorded after about 8 days of the incident – No reason showed in statement as to why such facts were not mentioned in FIR immediately after incident and while recording of statement u/S 161 Cr.P.C. - No case is made out under the Act of 1989 – Subsequent charge framed u/S 3(1)(x) of the Act of 1989 is hereby quashed – Application allowed: *Mohsin Vs. State of M.P., I.L.R. (2017) M.P. *118*

– Section 3 (1-11) – See – Criminal Procedure Code, 1973, Sections 482 & 320: *Sagar Namdeo Vs. State of M.P., I.L.R. (2016) M.P. 3415*

– Section 3(1)(xi) – See – Penal Code, 1860, Section 354: *Santosh Vs. State of M.P., I.L.R. (2018) M.P. *36*

– Section 3(1)(xi) and Constitution – Article 142 – Quantum of Punishment – Minimum Sentence – Held – Where minimum sentence is provided for an offence, Court cannot impose less than the minimum sentence – Provisions of Article 142 of Constitution cannot be restored to impose sentence less than the minimum sentence contemplated by Statute – Appeal allowed: *State of M.P. Vs. Vikram Das, I.L.R. (2019) M.P. 1195 (SC)*

– Section 3(1)(xii) – See – Penal Code, 1860, Section 376: *Anant Vijay Soni Vs. State of M.P., I.L.R. (2018) M.P. 203*

– Section 3(2)(v) – Caste Documents – Held – No documentary evidence about caste of prosecutrix available on record – Evidence do not show that appellant committed rape on victim on the ground that she belongs to Scheduled Caste – Offence under the Act of 1989 not made out: *Indal @ Inderbhan Vs. State of M.P., I.L.R. (2018) M.P. 2959 (DB)*

– Section 3(2)(v) – Grounds – Appreciation of Evidence – Held – Appellant called the deceased by his caste name, is admittedly in the field when there was a sudden quarrel – No evidence to show that offence was committed only because deceased belonged to scheduled caste – Conviction set aside: *Khuman Singh Vs. State of M.P., I.L.R. (2019) M.P. 2435 (SC)*

– Section 3(2)(v) – See – Penal Code, 1860, Sections 302, 354 & 449: *Shrawan Vs. State of M.P., I.L.R. (2018) M.P. 740 (DB)*

– Section 3(2)(v) – See – Penal Code, 1860, Section 306: *State of M.P. Vs. Deepak, I.L.R. (2019) M.P. 1624 (SC)*

– Section 3(2)(v) – See – Penal Code, 1860, Section 376: *Indal @ Inderbhan Vs. State of M.P., I.L.R. (2018) M.P. 2959 (DB)*

– Section 3(2)(v) (unamended) – See – Penal Code, 1860, Section 376 (1) & 506-B: *Vimlendra Singh @ Prince Singh Vs. State of M.P., I.L.R. (2019) M.P. 2336 (DB)*

– Sections 3(2)(Va), 3(1)(d) & 18 – See – Criminal Procedure Code, 1973, Section 438: *Ajeet Jain Vs. State of M.P., I.L.R. (2018) M.P. 1213*

– Section 14(A)(2) – Second Appeal – Maintainability – Principle of Res-Judicata – Respondent/State took an objection that in the present case, once appeal has already been dismissed and therefore second appeal is not maintainable – Held – Nomenclature of 'appeal' used in Section 14(A)(2) of the Act is not an appeal in strict sense but a provision enabling a person before the High Court against granting or refusing bail by the Special Court or the Exclusive Special Court specified therein – It is settled law that principles of res-judicata or constructive res-judicata does not apply to a bail application – A fresh appeal is maintainable after rejection of first appeal u/S 14(A)(2) of the Act of 1989 – Objection of the respondent/State is overruled: *Ramu @ Ramlal Vs. State of M.P., I.L.R. (2018) M.P. 163*

– Section 14-A(2) – See – Criminal Procedure Code, 1973, Section 439(2): *Sunita Gandharva (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2691*

– Section 18 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Bar u/S 18 of Act of 1989 – Held – If offence is registered under the Act of 1989, anticipatory bail can be granted when Court prima facie find that offence is not made out – Court cannot reject the bail outrightly, simply writing that police have registered offence under the Act of 1989 and thus bar u/S 18 of the Act is applicable – While rejecting bail application, it is mandatory for the Judge to give a definitive finding on the basis of evidence available on record – In present case, looking to evidence on record, bar u/S 18 not applicable – Bail granted: *Ramkumar Vs. State of M.P., I.L.R. (2018) M.P. 2254*

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT (33 OF 1989) (AS AMENDED BY ACT NO. 1/2016 ON 26.01.2016)

– Section 14-A – Appeal – Bail Application – Rejection thereof – Special Court – High Court – Held – u/S 14-A of the Act of 1989 an appeal is provided against an order rejecting bail application by the Special Court to High Court within 90 days from the date of the order appealed from & sub-Section 3 of Section 14-A provides that the High Court can condone the delay, if appeal is presented within a period of 180 days but beyond 90 days – After 180 days there is no power vested in the Court to condone the delay: *Vikram Singh Vs. State of M.P., I.L.R. (2017) M.P. 139*

– Section 14-A– Appeal – Maintainability – Trial Court rejected bail application on 05.10.2015 – High Court rejected bail application u/S 439 of Cr.P.C. on 21.04.2016 – Whether appeal u/S 14-A of the Act of 1989 is maintainable against the bail order, (accepting or rejecting), passed by the High Court – Held – No appeal is provided from an order passed by the High Court, accepting or rejecting the bail application under the scheme of the Act of 1989: *Vikram Singh Vs. State of M.P., I.L.R. (2017) M.P. 139*

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT (27 OF 2018)

– Section 18-A and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Amendment of 2018 – Jurisdiction – Held – Although vide amendment of 2018, preliminary enquiry has been dispensed with and power of investigating officer to arrest has been reiterated, still the power of judicial review and power to grant bail u/S 438 Cr.P.C., if offence is not prima facie made out, is not

curtailed and cannot be curtailed by any Act: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

– Section 18-A, Criminal Procedure Code, 1973 (2 of 1974), Section 41 and Penal Code (45 of 1860), Section 26 – Amendment of 2018 – Procedure – Effect – Held – Amendment Act of 2018 nowhere restricts procedure of Section 41 Cr.P.C., whereby, before arresting a person, police officer must have "Credible Information" which is different from a mere complaint and must have "Reasons to believe" which is different from mere suspicion or knowledge that arrest is necessary – Provisions are still intact and not taken away by amendment of 2018: *Atendra Singh Rawat Vs. State of M.P., I.L.R. (2019) M.P. 168*

SCHOOL EDUCATION DISTRICT INSTITUTE OF EDUCATION AND TRAINING (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 1991

– Rules 4, 6 & 11 – See – School Education Teacher Education and Training Academic (Gazetted) Service Recruitment and Conditions of Service Rules, M.P, 2011, Rule 4(2)(a) & 6(c): *Devendra Kumar Soni Vs. State of M.P., I.L.R. (2020) M.P. 2799*

SCHOOL EDUCATION SERVICE (TEACHING CADRE), SERVICE CONDITIONS AND RECRUITMENT RULES, M.P., 2018

– Rule 2(k) – Guest Teacher – Choice/Change of School – Held – School-wise merit is prepared on basis of score card generated on basis of qualifications of candidates – If petitioners are not meritorious to find merit in school in which they were teaching, is not a ground to nullify the entire process of engaging guest teachers: *Saurabh Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 2845 (DB)*

– Rule 2(k) – Guest Teachers – Equitable Right – Held – Right of petitioners to be engaged as guest teacher is equitable right which entitles them for equal protection but not that the merit of the aspirants can be done away so as to allow candidates with lower score card to be appointed as guest teachers – It will be antitheses to the right of education of students of Government schools: *Saurabh Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 2845 (DB)*

– Rule 2(k), 8(1)(g) & 11 and Right to Children of Free and Compulsory Education Act, (35 of 2009) – Guest Teachers – Object – Appointment – Eligibility Criteria – Held – Guest teachers are engaged to meet out the emergent situation, it

cannot be a rule that they should continue year after year – Students are entitled to quality education and not to be taught by teachers who are not meritorious when more meritorious teachers are available for appointment – Guest teachers are engaged for limited periods – Candidates who are not able to secure appointment on basis of comparative merit, cannot claim any right to continue as guest teachers criteria/method cannot be said to be illegal or arbitrary and is justified – Petitions dismissed: *Saurabh Singh Baghel Vs. State of M.P., I.L.R. (2018) M.P. 2845 (DB)*

SCHOOL EDUCATION TEACHER EDUCATION AND TRAINING ACADEMIC (GAZETTED) SERVICE RECRUITMENT AND CONDITIONS OF SERVICE RULES, M.P., 2011

– Rule 4(2)(a) & 6(c) and School Education District Institute of Education and Training (Gazetted) Service Recruitment Rules, M.P., 1991, Rules 4, 6 & 11 – Repatriation to Parent Department – Held – Petitioner was neither holding the post of Lecturer at the time of commencement of Rules of 2011 nor he was absorbed in DIET cadre under Rules of 1991, nor he is a person directly recruited to service under Rules of 2011 & Rules of 1991 – He cannot be treated to be in service of DIET after commencement of Rules of 1991 & 2011 – No ground of interference – Petition dismissed: *Devendra Kumar Soni Vs. State of M.P., I.L.R. (2020) M.P. 2799*

SECURITIES AND EXCHANGE BOARD OF INDIA ACT (15 OF 1992)

– Section 26 – Cognizance of Offence by Court – Bar – Held – Case relates to breach of provisions of SEBI Act, 1992 and SEBI Regulations, 2013 – Only Special Court empowered to take cognizance on basis of complaint filed by SEBI Board – Police not authorized to register FIR in such cases because there is a statutory bar in such matters – FIR and subsequent proceedings quashed – Application allowed: *Alka Shrivastava Vs. State of M.P., I.L.R. (2020) M.P. *21*

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT (54 OF 2002)

– Sections 2(O), 4B, 13(2), 13(4) & 17 – Constitution – Article 226 – If a Bank or financial institution forms an opinion that an account of a borrower has become an Non Performing Assets (NPA) – Such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution – Further the question

whether the account has been correctly classified as a NPA or not is a factual dispute and appellant has an alternative efficacious remedy of appeal available u/S 17 of the SARFAESI Act: *Samrath Infrabuild (I) Pvt. Ltd., Indore Vs. Bank of India, I.L.R. (2016) M.P. 2654 (DB)*

– Section 13 & 14 – Notice of Proceedings – Held – The proceedings u/S 14 of the Act of 2002 are not proceedings to adjudicate the rights of parties – Thus no notice is contemplated to be served upon the debtor as such proceedings are taken only after serving notice u/S 13 of the Act: *Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes Vemalayam, I.L.R. (2018) M.P. 2350 (DB)*

– Sections 13(2), 13(3A), 13(8), 14 & 18 – Property auction – Maintainability of the writ petition – Availability of alternative remedy – Borrower directly challenging the order of DRT without exhausting the statutory remedy of appeal – Therefore, petition filed by borrower is not maintainable hence it is dismissed: *Surendra Jain Vs. Shripad, I.L.R. (2017) M.P. *31 (DB)*

– Section 13(2) & 17 and Reserve Bank of India Act (2 of 1934), Section 45(L) – Applicability of Circular – Petitioner obtained credit facility from Consortium of Banks for construction of composite logistic hub – Construction could not be completed as per plan which resulted in loss and backlog of interest amount – Joint Lenders Forum (JLF) decided restructure of petitioner's finances – Subsequently, vide circular of RBI it was contemplated that all accounts where scheme have been invoked but yet not implemented shall be governed by the revised framework and amount will be recovered u/S 13(2) of the Act of 2002 – Challenge to – Held – Decision of Banks was a commercial decision keeping in view of their financial risks and possibility of recovery of amount from petitioner, thus such decision do not warrant any interference/judicial review – In the present case, decision of JLF has not been implemented which can be said to be saved by the RBI Circular – RBI in exercise of statutory jurisdiction issued circular which has a statutory force and there cannot be any estoppel against a Statute – Remedy of petitioner lies before the DRT u/S 17 of the Act but after possession is taken – Petition dismissed: *Kesar Multimodal Logistics Ltd. (M/s.) Vs. Union of India, I.L.R. (2018) M.P. 1652 (DB)*

– Section 13(4) & 17 – Debt Recovery Tribunal – Jurisdiction – Statutory Remedy – Held – It is well settled that any person aggrieved by any notice or action taken under provisions of Act of 2002, the statutory remedy available to such person is to approach DRT by filing appropriate application under the provisions of the Act of 2002: *Century 21 Town Planners Pvt. Ltd. Vs. J.M. Finance Assets Reconstruction Co., I.L.R. (2018) M.P. 2382 (DB)*

– Section 13(4) & 17 and Constitution – Article 226 – Auction Proceedings – Highest Bid – Challenge to – Held – Highest bid of R-2 was accepted by R-1 in

presence of the petitioner where he had ample opportunity to raise his bid but he gave the last offer which was lower than the one given by R-2 – It is only on account of stay order passed by DRT, balance auction amount was not accepted by R-1 for which R-2 is not responsible or liable – No allegation of foul play or inadequacy of price etc when highest bid was accepted – No irregularities, fraud or collusion has been established by petitioner regarding confirmation of auction sale in favour of R-2, thus cannot be set aside – Writ Petition dismissed: *Century 21 Town Planners Pvt. Ltd. Vs. J.M. Finance Assets Reconstruction Co., I.L.R. (2018) M.P. 2382 (DB)*

– Section 14 – Jurisdiction of Court – Chief Judicial Magistrate took cognizance of an application u/S 14 of the Act of 2002 filed on behalf of the secured creditors – Challenge to – Held – Section 14 does not contemplate secured creditors to approach CJM for assistance to secure their assets – They can approach the Chief Metropolitan Magistrate in Metropolitan and the District Magistrate in non-Metropolitan areas – CJM has no jurisdiction to entertain application u/S 14 of the Act of 2002 – Impugned order set aside – Further held – Respondent bank will be at liberty to take recourse to remedy before District Magistrate – Petition disposed of: *Shyam Sunder Rohra Vs. Indus Ind Bank, I.L.R. (2017) M.P. *83*

– Section 14 – Pre-condition – Disclosure of Nine Different Points – Held – Section 14 contemplates disclosure of nine different points and where all nine points have been mentioned specifically in the affidavit filed, precondition mentioned in Section 14 of the Act is satisfied – Disclosure of order of Bombay High Court in proceedings u/S 9 of the Act of 1996 was not mandatory nor any prejudice has been caused to respondent due to such non-disclosure: *Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes Vemalayam, I.L.R. (2018) M.P. 2350 (DB)*

– Section 14 and Arbitration and Conciliation Act (26 of 1996), Section 9 – Applicability – District Magistrate – Duties and Power – Held – Act of 2002 overrides and will prevail over the provisions of all other statutes so as the Act of 1996 to the extent of inconsistencies – Proceedings initiated by appellant u/S 14 of the Act of 2002 before District Magistrate cannot be said to be illegal on account of a Receiver appointed in proceedings u/S 9 of the Act of 1996 – District Magistrate is conferred with power to secure possession and is duty bound to hand over physical possession to secured creditors – Impugned order set aside – Order of District Magistrate restored – Appeal allowed: *Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes Vemalayam, I.L.R. (2018) M.P. 2350 (DB)*

– Section 14 & 15 – Jurisdiction – Fact of Tenancy & Possession of Mortgaged Property – Petitioner availed credit facilities from respondent Bank whereby they mortgaged a property with the bank – Since petitioner failed to repay the said loan, bank initiated action against the petitioner and filed application u/S 14 of

the Act to take physical possession of the mortgage property – Challenge to – Held – District Magistrate exercising his powers under the Act has authorized Additional District Magistrate (ADM) to exercise powers u/S 14 of the Act and therefore orders passed under such exercise of powers by ADM is justified and within jurisdiction – Further held – Fact of tenancy in mortgaged property was well within the knowledge of bank but such fact was not disclosed in the application and therefore ADM without considering the fact of tenancy has passed the order of possession – In such circumstances, no action u/S 14 of the Act could be initiated – Further held – As per Section 15 of the Act of 2002, respondent bank can take over the management of company (petitioner) and keep the secured assets in its own custody till the rights of property is transferred in accordance with law – It is also clear that mortgaged property was a lease property and possession was taken by the Municipal Corporation and was only given on supurdginama to petitioner – Impugned orders passed by Additional District Magistrate are set aside – Bank will be at liberty to file fresh application u/S 14 of the Act of 2002 – *Petition allowed: Prafulla Kumar Maheshwari Vs. Authorized Officer and Chief Manager, I.L.R. (2018) M.P. 463*

– Section 17 & 18 and Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Section 18 – Bar of jurisdiction – The DRAT has been constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 – The DRAT is the appellate forum where the appeal lies against the order passed by the DRT u/S 17 of the SARFAESI Act of 2002 – Except the power to be exercised as appellate authority in the entire Act, the DRAT has no further power of review and revision, therefore, the DRAT cannot assume the power which is not available and provided under the Act – After passing the order u/S 18 by the DRAT, the Tribunal has become functus officio and cannot go beyond its powers: *Ramdev Ginning Factory (M/s.) Vs. Chief Manager, Authorized Officer, ICICI Bank Ltd., I.L.R. (2017) M.P. *11 (DB)*

– Section 17 & 34 – See – Civil Procedure Code, 1908, Order 43 Rule 1(a): *Hariram Vs. Jat Seeds Greeding & warehousing, I.L.R. (2017) M.P. 2192*

– Section 34 – Held – Section 34 clearly prohibits that no Civil Court shall have jurisdiction to entertain any suit or proceeding for which Debt Recovery Tribunal is empowered and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance to the power conferred under the Act: *Hariram Vs. Jat Seeds Greeding & warehousing, I.L.R. (2017) M.P. 2192*

– Section 34 – See – Constitution – Article 227: *Noor Mohammad Vs. State of M.P., I.L.R. (2019) M.P. 132*

SECURITY INTEREST (ENFORCEMENT) RULES, 2002

– Rules 3, 8(6) (e), 9 & 9(4) and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002) – Earnest money was deposited by successful bidders who could not deposit 25% of bid amount, therefore, the earnest money was forfeited – DRAT in appeal directed to refund the earnest money – Nothing on record that Bank at any point of time had waived off its right against the forfeited amount – Order passed by DRAT not in accordance of legal provision of law – Liable to be set aside: *State Bank of India Vs. Shri Rajeev Arya, I.L.R. (2017) M.P. *60 (DB)*

– Rules 9(3) & 9(4) – In auction notice itself the bank has wrongly provided deposit of 10% amount along with the tender and remaining 90% after acceptance of the tender contrary to Rule 9(3) whereas Rule 9(4) contemplates that balance amount of the purchase price shall be paid by the purchaser to the authorised officer on or before 15th day of confirmation of the sale or such extended period as may be agreed upon in writing between the parties – No such agreement in writing was arrived at between the auction purchaser and the bank and time can not be treated to be extended by way of correspondence in absence of any agreement in writing: *Surendra Jain Vs. Shripad, I.L.R. (2017) M.P. *31 (DB)*

SEEDS ACT (54 OF 1966)

– Section 19 – See – Essential Commodities Act, 1955, Section 7(1)(A)(II) & 7(2): *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

SEEDS (CONTROL) ORDER, 1983

– Clause 13 – Search & Seizure – Competent Authority – Held – Act of search and seizure and taking samples for laboratory testing can only be done by a Seed Inspector – Police was not authorized to do so as per clause 13 of the Control Order, 1983 – Police acted in contravention of specific provision: *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

– Clause 14 – Laboratory Test Report – Time Period – Held – Laboratory analysis report should be send to concerned seed inspector within 60 days from date of receipt of the sample in laboratory which was not done in present case – It is a breach of Clause 14 of the Control Order, 1983: *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

SEEDS RULES, 1968

– Rule 8 – See – Essential Commodities Act, 1955, Section 7(1)(A)(II) & 7(2): *Imran Meman Vs. State of M.P., I.L.R. (2020) M.P. 2722*

SERVICE LAW

SYNOPSIS

1. Adverse Remark

– Scope – Held – If an incident of misconduct is found not proved in departmental enquiry, then the same misconduct cannot be a cause for an adverse remark – Such remark in ACR is quashed – Petition partly allowed: *Sunil Kumar Khare Vs. M.P. State Electricity Board, I.L.R. (2019) M.P. 1654*

2. Age of Superannuation

– Enhancement – Grounds – Held – Documents on record shows that Corporation has not adopted the Circular or amendment made in FIR regarding age of superannuation of State Government employees, thus such Circulars are not ipso facto applicable to employees of Corporation – They cannot claim equality with Government employees in respect of age of superannuation: *Ashutosh Pandey Vs. The Managing Director, MPRTC, I.L.R. (2020) M.P. 888 (DB)*

– Enhancement – Petitioner/teachers of Private aided institutions – Enhancement of age of superannuation for the teachers – No material on record to show that UGC Regulation in relation to private aided institution is accepted by the State Government – Petitions dismissed: *Dinesh Chandra Mishra (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *3*

– Fixation of – Held – In respect of fixation of age of superannuation, Apex Court concluded that it is a policy decision and is within the wisdom of Rule making authority, thus judicial review in such administrative action is not called for: *Ashutosh Pandey Vs. The Managing Director, MPRTC, I.L.R. (2020) M.P. 888 (DB)*

– Permanent Employee & Daily Rated Employees – Held – When there is no difference in age of retirement for regular Class III and Class IV employees, then there should not be two different age of superannuation for classified permanent employees – When pay scales are common for all daily rated employees who are classified as permanent employee, then there should be common age of retirement – Petitioner liable to continue his service upto the age of 62 Years – Petition allowed: *Mrigank Mohan Mishra Vs. State of M.P., I.L.R. (2019) M.P. 2255*

– Service Benefits – Entitlement – Held – As per the interim order passed in the instant case, petitioner entitled for all service benefits including monetary benefits

accrued to him on his post, treating him in continuous service upto 62 years of age: *Amiruddin Akolawala Vs. State of M.P., I.L.R. (2019) M.P. 857*

– Teacher of Aided Private Institution – Jurisdiction of Coordination Committee – Held – Fixation of age of superannuation in a private aided institution/ college is within the jurisdiction of the Coordination Committee: *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299 (FB)*

– Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, M.P. (29 of 1967) and Shaskiya Sevak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, M.P. (28 of 1998), Section 2 – Teacher – Educational Institutions – Age of Superannuation – Amendment regarding extension of age of superannuation from 60 years to 62 years for teachers – Petitioner, a Junior Weaving Instructor claiming benefit of amendment filed writ petition and the same was allowed – State filed appeal whereby the matter was referred to larger bench – Held – Classification in the recruitment Rules is not determinative of the fact that whether a Government servant is a teacher or not, as the meaning assigned to Teacher in the State Act has to be preferred over the classification of teacher in the Recruitment Rules – Amending Act has given wide meaning to the expression "Teacher" which includes the "Teachers irrespective of the designation and appointed in a Government Technical and Medical Institutions" – As per the amending Act, "Teachers" as per the explanation is not restricted to Teacher in Government Schools or Colleges or different ranks and status but all teachers from the lowest to highest ranks – Training Centres and Vocational Training Centres of State Government are Educational Institutions for extending the benefit of age of superannuation to a person imparting training as Instructor – Hence, "Instructors" engaged for imparting training to women in the Tailoring Centre working under the Department of Women and Child Development are entitled to extension in age upto the age of 62 years being teachers as mentioned in the amending Act – Question of Law referred, answered accordingly: *State of M.P. Vs. Yugal Kishore Sharma, I.L.R. (2018) M.P. 844 (FB)*

3. Appointment

– Aanganwadi Sahayika – Held – Circular dated 15.05.2017 is clarificatory in nature and clarifies that benefit of 10 marks of BPL can be granted to candidate whose name finds place in said list of BPL before date of advertisement for appointment and remains in the list – Advertisement issued on 07.07.2015 whereas name of petitioner's husband included in BPL list on 20.07.2015 (last date of submission of application) – Petitioner not entitled for 10 marks as per policy – Appointment rightly cancelled – Petition dismissed: *Meena Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1326*

– Character Verification – Held – At the time of character verification, if a candidate is found acquitted on merits by Court, he shall be treated to be eligible for government service: *Anil Bhardwaj Vs. The Hon'ble High Court of M.P., I.L.R. (2020) M.P. 2735 (SC)*

– Criminal Antecedent – Effect – Appointment in Police Service – Held – Petitioner was convicted u/S 325 IPC and in appeal he was acquitted on basis of compromise – As per dictum of Apex Court, such acquittal did not fall under clean or honourable acquittal – While considering the case of candidate for appointment in police force, his criminal antecedents are required to be meticulously examined – Petitioner not fit for appointment – *Petition dismissed: Pawan Vs. State of M.P., I.L.R. (2019) M.P. 8*

– Criminal Antecedent – Post of Subedars, Platoon Commanders and Inspectors of Police – Held – Apex Court has earlier concluded that even in cases where truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents and suitability of candidate and could not be compelled to appoint such candidate – Employer can take into account the job profile, severity of charges levelled against candidate and whether the acquittal was an honourable acquittal or was merely on ground of benefit of doubt or as a result of composition – Decision of authority on question of suitability of candidate was correct and not actuated with any malafide – Appeal allowed: *State of M.P. Vs. Abhijit Singh Pawar, I.L.R. (2019) M.P. 526 (SC)*

– Moral Turpitude – Suitability – Post of Head Constable – Appointment of petitioner was cancelled on account of registration of criminal case – Held – In the said criminal case, acquittal of petitioner was honourable and not on basis of benefit of doubt or technical ground, question of moral turpitude would not come in the way of petitioner – Declaration that petitioner is not suitable for post of constable is bad – Respondents directed to issue posting order – Petitioner shall be entitled for seniority but not for back wages – Petition allowed: *Yogesh Bharti Vs. State of M.P., I.L.R. (2019) M.P. *39*

– Criminal Case – Petitioner selected for the post of Kanisht Apoorti Adhikari and Inspector Weights and Measurements – However, no appointment order was issued – It was recorded that the petitioner was prosecuted for the offence under Section 147, 323, 325 & 452/34 of IPC – However, trial court already acquitted the petitioner – Held – Petitioner is qualified for appointment, as he had successfully fulfilled other requisites – Authority/Police Authorities cannot sit over the judgment of the court – Thus, writ petition allowed: *Ravindra Singh Vs. State of M.P., I.L.R. (2016) M.P. *8*

– Criminal Case – Petitioner was selected – Criminal case was registered against the petitioner for commission of offences punishable u/S 294, 323, 451, 506-B & 34 of I.P.C. – He was acquitted after giving benefit of doubt – Held – Petitioner has been acquitted from the offences after trial – The Trial Court specifically observed that false implication of the petitioner in the case cannot be ruled out – There was a quarrel between the parties and a counter case was also lodged against the complainant party – Authority did not consider the case of the petitioner in proper perspective and rejected the candidature of the petitioner only on the ground that the petitioner was tried for commission of offence – This approach of the authority is not proper – Impugned order dated 23.12.2014 quashed – Respondent was not justified in rejecting the petitioner's candidature – Petition is allowed: *Pushpendra Mishra Vs. State of M.P., I.L.R. (2016) M.P. 1936*

– Criminal Case – Post of Constable – Pending Criminal Case – Consideration & Effect – Held – In case where acquittal in criminal case is based on benefit of doubt or any other technical reasons, employer can take into consideration all relevant facts for appropriate decision as to fitness of incumbent for appointment/ continuance in service – When respondent participated in selection, criminal case was pending consideration and he has been acquitted subsequently – Acquittal based on benefit of doubt where witnesses turned hostile, is not a clear acquittal in criminal case – He was not acquitted because the case was found to be false – Respondent rightly declared unfit for appointment – Impugned order set aside – Appeal allowed: *State of M.P. Vs. Bunty, I.L.R. (2019) M.P. 1803 (SC)*

– Requisite Qualification – Held – Petitioner disclosed his qualification and relaxation was granted by University as per ordinance and thereafter appointment was given – No suppression by petitioner – Authority, at later stage cannot conclude that his qualification was not requisite as per advertisement: *Sheikh Mohd. Arif Vs. Dr. Hari Singh Gaur University, Sagar, I.L.R. (2020) M.P. 140*

– Select List – Held – Mere inclusion in select list does not give an indefeasible right to a candidate – Employer has a right to refuse appointment on valid grounds: *Anil Bhardwaj Vs. The Hon'ble High Court of M.P., I.L.R. (2020) M.P. 2735 (SC)*

– Substantive Appointment & Permanency by Classification – Distinction – Discussed and explained: *State of M.P. Vs. Rajendra Kumar Jain, I.L.R. (2018) M.P. 2880 (DB)*

– Validity period of Select List – Entitlement – Held – Since validity period of select list had already expired much before petitioner approached this Court and PSC has also refused to extend validity period, therefore on date of filing of petition, it was not open to petitioner to seek appointment on basis of select list which was no

longer in existence – Petitioner a wait list candidate – On arisen of vacancy due to termination of a selected candidate after expiry of validity period of select list does not give any legal enforceable right to claim appointment on said post on basis of her position in waiting list – Petition dismissed: *Usha Damar (Ms.) Vs. State of M.P., I.L.R. (2019) M.P. 1069*

– Anganwadi workers – Issue of awarding 10 marks each for being graduate and belonging to BPL family – Question involved – Whether marks for additional qualification can be awarded to a candidate who has acquired said qualification not on the date when he applied for the post but before the last date of submission of application form particularly when there is no cut-off date appointed in the policy nor in the advertisement – Held – Yes, the petitioner held qualification of B.A. before the cut-off date of submission of application form and mark sheet was issued much before consideration for selection therefore, she was validly possessing graduation degree at the time of selection or at the time of consideration for selection and 10 marks can be awarded to her as the grant/conferral of degree is procedural or ministerial work – Further held – Since petitioner has annexed Ration Card showing her status as member of family possessing BPL Card and if the petitioner did not belong to a family below poverty line, then how ration card for a family living below poverty line has been issued, was not addressed by authorities while passing the impugned order and no documents or pleading in rebuttal has been preferred by the respondent State; therefore awarding of 10 additional marks cannot be excluded for the same: *Renu Devi (Smt.) Vs. Commissioner, Chambal Division, Morena, I.L.R. (2016) M.P. 3298*

– Irregular & Illegal – Difference – Where the persons employed possess the prescribed qualification and working against sanctioned posts, but selected without due process, the appointment is irregular – But where the persons appointed do not possess the prescribed minimum qualification and not working against the sanctioned posts, the appointment is illegal: *Geeta Rani Gupta (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 2148 (FB)*

– Prescription of Qualification – Constitution – Article 226 & 309 – Writ Jurisdiction – Held – Mode of appointment is within domain of appointing authority or selection body – Courts and Tribunals can neither prescribe qualifications nor entrench upon powers of authority so long as such prescribed qualification is reasonably relevant and do not obliterate the equality clause – Appointing authority is competent in its power of general administration to prescribe eligibility criteria/educational qualifications as it deems necessary and reasonable – Impugned advertisement for appointment has been issued for specific project but not under any statutory rules either referable to Article 309 of Constitution or a statute – Prescription of qualification and Roster

system has no relevance – No interference warranted under writ jurisdiction – Petitions dismissed: *Vikas Malik Vs. Union of India, I.L.R. (2019) M.P. 558*

– Continuation of Service – Petitioner appointed as counsellor in RCH project on contractual basis on 13.06.2007 for one year, which was further extended up to 31.03.2010 – Contract was not renewed and services terminated on 15.09.2010 after giving one month's notice – No fresh advertisement for the post – Held – Contract period of petitioner is over and the project itself has come to an end, no case of interference – Petition dismissed: *Vijay Kumar Mandloi Vs. State of M.P., I.L.R. (2016) M.P. 1954*

– Deleting the name from select list to the post of constable – Denying the appointment – Petitioner had suppressed the information relating to two criminal cases in which he was prosecuted – Therefore, respondents have committed no error in finding the petitioner unsuitable for the post of constable and striking out his name from select list: *Sheru Khan Vs. State of M.P., I.L.R. (2016) M.P. *45*

– Education Service (Collegiate Branch) Recruitment Rules, M.P., 1990, Article 15, 16(1) & (2) – Examination – Age Criteria – Post of Assistant Professor – Minimum/Maximum age criteria for candidates was 21/28 whereas for candidates who are domicile of M.P, was 21/40 – Challenge to – Held – All citizens of the Country have to be treated equally – Mandate of Constitution is violated when place of birth or residence has been made basis for discrimination for candidates belonging to outside the State of MP – Such discriminatory treatment is not tenable in law – Condition in advertisement for relaxation of age upto 40 years for the candidates who are domicile of MP is unconstitutional in view of Article 15 and 16 of the Constitution and hence is set aside – Petition allowed: *Mukesh Kumar Umar Vs. State of M.P., I.L.R. (2018) M.P. 1601 (DB)*

– Gram Rojgar Sahayak – Madhya Pradesh Rajya Rojgar Guarantee Council (Madhya Pradesh State Employment Guarantee Council) – Scheme framed by council for Appointment of Gram Rojgar Sahayak's (Petitioner) wherein desirable condition or qualification was computer efficiency test – Gram Panchayat – Amendment in advertisement – Amending – Desirable qualification of computer efficiency test to essential qualification – Challenge to – Held – There is no condition in the scheme that gram panchayat can add modify or delete any of the conditions of the scheme framed by the council, therefore the desirable qualification of computer efficiency test converted by the Gram Panchayat to essential qualification is not legally sustainable – Appointment had to be made strictly in terms of the scheme as framed by the council – Review petition dismissed: *Amit Kumar Mishra Vs. State of M.P., I.L.R. (2018) M.P. 1968 (DB)*

– Panchayat Karmi – Qualification – Merit Criteria – Determination – Held – Authorities found Respondent No. 5 more meritorious than appellant in merit on basis of essential qualification as per scheme – Appellant not entitled for any preferential right because he secured more marks in higher qualification (M.A.) because merit was prepared on minimum essential qualification in Class 10th – No illegality and perversity in impugned order – Appeal dismissed: *Kandhai Singh Marko Vs. State of M.P., I.L.R. (2018) M.P. *91 (DB)*

– Qualification for the post – It lies in the domain of the administrative and policy decisions – No interference unless violation of constitutional and statutory provision or found to be having no reasonable nexus with the function and duties attached to the post: *Pawan Bharadwaj Vs. State of M.P., I.L.R. (2016) M.P. 2486*

– Registration and Stamp Class III (Non-Ministerial) Service Recruitment Rules, M.P., 2007 and Registration and Stamp Class III Ministerial Service Recruitment Rules, M.P., 2007 – Appointment – Amalgamation of Post – Amendment in Rules – Petitioners applied for and got selected for post of Registration Clerk – Respondents took consent of petitioners for the post of Assistant Grade III on the ground that post of Registration Clerk and Assistant Grade III were amalgamated by decision of State Government – Later, after joining as Assistant Grade III, petitioners came to know that plea of amalgamation was incorrect and no such amendment in Rules has been made – Challenge to – Held – Post of Registration Clerk is governed by Non Ministerial Rules and post of Assistant Grade III is governed by Ministerial Rules of department – Amalgamation of these two posts merely on basis of a communication without amendment in Rules is not permissible – Cabinet has also not taken such decision of amalgamation – Till date, no amendment made in Rules – Petitioners applied for post of registration clerk and was duly selected on the said post – Stand taken by Government is fallacious and contrary to Rules – Petitioners be allowed to work on post of Registration clerk – Petitions allowed: *Nanhe Singh Maravi Vs. State of M.P., I.L.R. (2017) M.P. *107*

4. Cancellation of Select List

– Grounds – Enquiry – Selection for the post of Lab Technician – Respondents vide notice in newspapers cancelled the whole selection list on the ground of complaints regarding irregularities in examination/selection process – Challenge to – Held – Before verifying the genuineness and correctness of allegation made in complaint, respondents mechanically cancelled the entire selection – Selection cannot be cancelled on mere asking – If certain persons used unfair means or participated in improper way and if such persons can be detected, action of cancelling entire selection cannot be upheld because it will have serious impact on genuine and honest candidates – No enquiry and no prima facie proof or report that selection is wholly vitiated or

there exist any irregularities actually committed – Respondents acted in undue haste and without application of mind – Letter dated 13.05.2011 of Dy. A.G shows that inquiry was not completed whereas selection was cancelled on 23.02.2011 – Impugned order of cancellation of selection list is quashed – Respondents may take action against tainted candidates – Petition allowed to such extent: *Sharad Vishwakarma Vs. State of M.P., I.L.R. (2018) M.P. 1455*

5. Caste Certificate

– Approval/Cancellation – Procedural guidelines laid down by Apex Court, enumerated: *Sultan Singh Vs. Union of India, I.L.R. (2019) M.P. 2248*

– High Power Committee – Powers – Held – High Power Committee is competent to examine the entire material placed before it and record a finding that the caste certificate is genuine or false – Report of Superintendent of Police is not binding on Committee – High Power Committee concluded that caste certificate issued to respondent was not genuine and was a forged certificate – Respondent failed to produce any document in support of his contention that he belongs to 'Halba' caste – Appeal allowed: *State of M.P. Vs. Sanjay Kumar Koshti, I.L.R. (2018) M.P. 2369 (DB)*

6. Charge-Sheet

– Practice – Railway Board's Circular No. RBE No. 171/199 – Petitioner, a Health Inspector in Railway department was served with a charge sheet on 30.11.2011 and subsequently it culminated into order of punishment dated 21.02.2012 – After 2 ½ years, on 18.07.2014, again a charge sheet was issued to petitioner for same charges – Department vide order dated 15.07.2014 withdrawn the earlier charge sheet – Petitioner filed application before the Central Administrative Tribunal whereby the same was dismissed – Challenge to – Held – It was beyond the authority's competence to have withdrawn/recalled the earlier charge sheet dated 30.11.2011 which had already culminated into order of punishment and which petitioner had already undergone – For doing so, no reasons were assigned by the competent authority – Impugned order passed by Tribunal is not sustainable in law and is hereby set aside – Original Application filed by the petitioner allowed – Petition allowed: *J.S. Chauhan Vs. Union of India, I.L.R. (2018) M.P. *25 (DB)*

7. Circulars & Minutes

– Circulars and Minutes – State government circulars and minutes run counter to the directions issued by Apex Court in Umadevi's case – No mandamus can be issued on basis of such circulars and minutes: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 2756*

– Nature of Circular – Retrospective Effect – Held – Main policy is dated 10.07.2007 and selection process concluded in the year 2015 whereas circular is dated 15.05.2017 – Since the circular is clarificatory in nature, the same would have retrospective effect and would be operative from the date of very inception of the policy: *Meena Devi (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 1326*

8. Civil Services (CCA) Rules, M.P. 1966

– Rule 3(1)(d) & 29(1)(iii) and Police Regulations, M.P., Regulation 213 & 270(4) – Power of Revision – Limitation, Scope and Grounds – DIG (Dy. Inspector General of Police) imposed penalty of censure (minor penalty) to petitioner – After lapse of more than one year, IG (Inspector General of Police) cancelled the earlier order and issued charge sheet to petitioner and initiated departmental enquiry – DGP dismissed the representation of petitioner – Challenge to – Held – Power of revision has been exercised after a lapse of more than 1½ years - Police Regulation does not prescribe within how much time, power of revision can be exercised but assistance of principle laid down in Rule 29(1)(iii) of CCA Rules can be taken to conclude that the order passed by revising authority after a lapse of six months is bad in law – Further held – Wherever specific provisions in Police regulations is not there, applicability of CCA Rules cannot be ousted and guidance may be taken from the same – Without cancelling the order of minor penalty, issuance of charge sheet on same cause and allegation and to initiate departmental enquiry is not permissible under Police Regulations – Order passed by the IG and DGP and the charge sheet is quashed restoring the order of minor penalty passed by DIG – Petition allowed: *Ashish Singh Pawar Vs. State of M.P., I.L.R. (2017) M.P. 2124*

– Rule 14 & 15 – Order for Fresh Inquiry – Held – In case of disagreement with report of Inquiry Officer, Disciplinary Authority can order for further inquiry and not de novo fresh enquiry – Decision of fresh inquiry by appointment of a new Inquiry Officer is not in accordance with Rule 15 of the Rules of 1966 – Matter remanded back to Inquiry officer to hold further inquiry – Appeal allowed: *Pramod Kumar Agrawal Vs. State of M.P., I.L.R. (2017) M.P. *119 (DB)*

– Rule 15(2) – Disagreement with Inquiry Authority – Procedure – Dismissal from Service and Recovery – Tender/Contract regarding Deendayal Mobile Health Unit was floated whereby the same was awarded to a party which was later terminated – Party challenged the termination of contract in an earlier writ petition whereby the same was allowed and this Court quashed the termination of contract – Subsequently, regarding alleged financial irregularities, petitioner, under disciplinary proceedings was punished with dismissal of service and order of recovery was passed against him – Challenge to – Held – Inquiry Commissioner exonerated petitioner from the charges – Even matter was referred to Lokayukta whereby they did not find any irregularity

and closed the inquiry – Petitioner was proceeded ex-parte and punishment was imposed – Decision of Disciplinary Authority is contrary to decision taken by Division Bench of this Court – Impugned order of dismissal of service and order of recovery quashed – Petitioner directed to be reinstated with backwages – Petition allowed: *Ashok Sharma (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 2173*

– Rule 18 – Common Inquiry – Held – Petitioner has neither raised any such objection/pleaded in the present petition nor before the Board that since many employees were involved in disciplinary proceedings arising out of same incident, a common inquiry should have been conducted – Petitioner has miserably failed to show any prejudice if a joint inquiry was not conducted: *R.K. Rekhi Vs. M.P.E.B., Rampur, Jabalpur, I.L.R. (2018) M.P. 906*

– Rule 22(i) & 23 – Order of Punishment passed by name of Governor – Appeal – Maintainability – Held – Authentication of an order of punishment in the name of Governor is an order of State Government against which an appeal would lie to Governor under Rule 23 of the Rules of 1966 – Executive functions of State are carried out in the name of the Governor, but are not exercised by the Governor in his personal capacity – Further, no appeal shall lie to the Governor if an order is passed by him personally in terms of Rule 22(i) of Rules of 1966: *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696 (FB)*

– Rule 23 & 24(1)(i)(b) – Appellate Authority – Held – In terms of appeal under Rule 23, appellate authority shall be Governor in terms of Rule 24(1)(i)(b) of the Rule of 1966 but again, it is not the power to be exercised by Governor personally, but by the "Council of Ministers" or the "Ministers" as may be warranted in the Rule of Business: *State of M.P. Vs. P.N. Raikwar, I.L.R. (2018) M.P. 2696 (FB)*

– Rule 9(2)(a) – Suspension – Charge Sheet – Issuance & Service of – Limitation – Suspension order of Respondent No. 2 was quashed in writ petition on the ground that charge sheet was issued beyond the period of 45 days – Challenge in appeal – Held – As per records available and the Register of Dispatch produced by appellant, charge sheet was issued on 45th day from date of issuance of suspension order – Apex Court concluded that issuance of charge sheet means its dispatch to government servant and further fact of its service is not a necessary required part – "Issue" of charge sheet does not mean service of the same – Charge sheet timely issued – Impugned order set aside – Appeal allowed: *Municipal Corporation, Jabalpur Vs. State of M.P., I.L.R. (2017) M.P. *127 (DB)*

– Rule 14(23) and Police Regulations, M.P., Regulation 226 & 228 – Dismissal from Service – Opportunity of Hearing – Natural Justice – Petitioner, a police constable was dismissed from service under a departmental enquiry – Appeal by petitioner was

also dismissed – Challenge to – Held – Although the victim girl turned hostile, conduct of petitioner who was a member of disciplinary force, uttering obscene and indecent words, causing physical and mental harassment to the victim girl in a drunken condition in public domain has certainly damaged the image of Police Department – In the instant case, there was proper consideration of statement of prosecution witnesses and medical evidence – Punishment of dismissal is not shockingly disproportionate – No interference warranted under Writ Jurisdiction – Petition dismissed: *Rudrapal Singh Chandel Vs. State of M.P., I.L.R. (2017) M.P. 2333*

9. Civil Services (Pension) Rules, M.P. 1976

– Rule 23 – Amendment – Applicability – Counting of suspension period for the purpose of qualifying service – Held – Petitioner remained suspended from 25.07.1992 to 11.06.1996 – Order of punishment was passed on 11.06.1996 – Rule 23 was amended w.e.f. 30.12.1999 – Amendment in Rule 23 will not be applicable retrospectively – Un-amended Rule 23 will apply which was prevailing on the date when suspension period of petitioner was over and order was passed – Respondent directed to count the suspension period for purpose of qualifying service – Writ Petition allowed: *Mohan Pillai Vs. M.P. Housing Board, I.L.R. (2018) M.P. *18*

– Rule 26 – Computation of Pension – Forfeiture of Service on Resignation – Inordinate Delay – Petitioner filed the petition in 2011 challenging the order dated 06.11.1982 – Petitioner is highly educated and resourceful person and not uneducated, uninformed and under privileged person, so ought to have filed the petition within reasonable time – Delay of 29 years in filing petition is inordinate delay – Petition dismissed: *Rewa Prasad Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 1648*

– Rule 26 – Computation of Pension – Forfeiture of Service on Resignation – Petitioner worked from 1959 to 1970 in the State of M.P. and then shifted to Banaras Hindu University – As per Rule 26, it is incumbent upon petitioner to opt for any other service under the State Government only – He cannot claim for entitlement of his previous service in the State Government after obtaining the service under any other States other than State of M.P. – Petitioner not entitled for any benefit of his past services rendered in State of M.P. when his subsequent appointment is in the State of U.P. – Petition dismissed on merits also: *Rewa Prasad Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 1648*

– Rule 42 – Voluntary Retirement – Withdrawal – Held – As per Rule 42 of the Rules of 1976, once application for voluntary retirement is accepted by respondent, the same cannot be withdrawn – Application for withdrawal of resignation can be filed before its acceptance – So far as 30 days notice period is concerned, the same would be applicable in those cases where no period has been mentioned in application for voluntary retirement – In the instant case, choiced date has been mentioned in

application – No illegality in impugned order – Petition dismissed: *Shanti Verma (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2134*

– Rule 47(6) – Family Pension – Disabled Unmarried Daughter – Petitioner, an 85 years old widow and a pensioner of State Government filed application under Rule 47 of the Rules of 1976 to include her 64 years old unmarried daughter for family pension, who is 69% disabled and is mentally retarded and she is completely blind and there is no other family member to look after her – Application rejected on the garb of a government circular whereby disability should have been occurred before attaining age of 25 years and no such record was available – Challenge to – Held – Reasoning assigned in circular is absurd – There is no such embargo provided in Rule 47(6) – Executive instructions cannot supersede or amend the Statutory Rules – Circular issued is contrary to Rules framed by State Government – Impugned order quashed – State directed to incorporate the name of petitioner's disabled daughter for family pension – Petition allowed with cost of Rs. 1,00,000/- to be paid by State Government – Petition allowed: *Krishna Gandhi (Mrs.) Vs. State of M.P., I.L.R. (2018) M.P. 1427*

– Rule 66 – Recovery – Petitioner filed a writ petition challenging the recovery of G.P.F. debit balance of Rs. 1,86,836 made by his department after superannuation of petitioner, from the amount of gratuity withheld – Petition was dismissed – Writ Appeal – Held – Scheme of Rule 66 can be bifurcated in two parts, first pertains to recovery of ascertainable dues and second of unascertainable dues – In case of ascertainable dues, the mode of taking cash deposit or surety or recovery from gratuity at the time of retirement is permissible and period of 12 months from the date of retirement is prescribed for completing the process of assessment and calculation but in case of unascertainable dues relating to house rent and water charges, period of six months from the date of retirement is provided for the government for assessment and calculation of actual due amount – After the stipulated period of 6/12 months, only mode available for recovery of such dues is to file a suit of recovery before the Civil Court – In the instant case, respondents made the impugned recovery of ascertainable dues after more than two years from the date of retirement and without following the prescribed procedure of approaching the Civil Court for recovery of the said dues – Recovery made from gratuity amount is hereby declared unlawful and is set aside – Respondents directed to refund the amount so recovered, and release the full gratuity amount alongwith 10% interest from the date of retirement till realization – Appeal allowed: *Ramnarayan Sharma Vs. State of M.P., I.L.R. (2017) M.P. 1324 (DB)*

– Rule 9 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 19 – Permanent Stoppage of Entire Pension – Opportunity of Hearing – Approval – Held – State Government has ample power under Rule 9 of the Pension

Rules to stop the pension in cases where pensioner is found guilty of grave misconduct/ offence in departmental enquiry or judicial proceedings – Such conduct should be related to the period when he was in service – In the present case, conviction is founded upon his conduct as an employee – Conviction was upheld by this Court and Supreme Court – Full Bench of this Court held that after conviction by a Court of competent jurisdiction, no opportunity of hearing is required to be given – Further held – Vide executive instruction, State Government clarified that approval of PSC is required in such cases where employee is appointed through PSC – In the present case, petitioner was not appointed through PSC, thus no approval was required – Petitioner not entitled to receive pension from the date of impugned order – Petition dismissed: *Prem Chand Chaturvedi Vs. State of M.P., I.L.R. (2017) M.P. 1636*

10. Classification of Branches

– Scale of Officer – Change of Status – Held – Bank notified five categories of branches and such classification has been approved by the Board as a Policy and is having statutory force – Petitioner, being a Scale IV officer transferred to the branch where only Scale I Officer can be the Branch Manager – It is lowering the status of petitioner which cannot be permitted under the garb of transfer showing it to be service and administrative exigencies – Impugned order quashed: *Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank, I.L.R. (2019) M.P. 379*

11. Classification of Employee

– Work Charged/Permanent/Regular Employee – Constitution – Article 142 –Difference – Held – Father of respondent was a work-charged employee and has been paid out of work-charged/contingency fund and having completed 15 yrs of service attained status of permanent employee which entitled him for pension and krammonati but this will however not ipso facto give him status of regular employee – Family of late employee has already been paid entitlement as per applicable policy – Exercising powers under Article 142, compassionate grant increased from 1 lakh to 2 lakhs – Appeal allowed: *State of M.P. Vs. Amit Shrivas, I.L.R. (2020) M.P. 2516 (SC)*

– Permanent Employees – Classification – Held – State Government issued circular to classify daily rated employees as permanent employees and classified them only as unskilled, semi-skilled and skilled – There is no category like Class III and Class IV permanent employee – No basis to have two different age of retirement for Class III and Class IV daily rated employees classified as permanent employees: *Mrigank Mohan Mishra Vs. State of M.P., I.L.R. (2019) M.P. 2255*

– M.P. Public Works Department (Non-Gazetted) Class III Recruitment and Service Rules 1972 – Dying cadre – Petitioners were initially

engaged on daily wages between 1989-1993 without following any due process of recruitment – State took a policy decision to create 342 posts of Sub-Engineers on daily wages as dying cadre – Petitioners having accepted appointment and having become member of new service cannot resile and claim that they be given benefit from initial date of appointment – Earlier decisions passed without considering the aspect of new service are not precedent – Petition dismissed: *Krishan Chandra Sharma Vs. State of M.P., I.L.R. (2016) M.P. 1679*

12. Compassionate Appointment

– Amended Policy – Applicability – Held – Record shows that on 02.06.2008 when petitioner's application for compassionate appointment came up for consideration, at that time there was a ban on compassionate appointment in the respondent Board, thus it was rightly denied – Later, amended compassionate appointment policy 2013 was introduced which was further amended in 2014, according to which petitioner was found ineligible – Since father of petitioner dies on account of heart attack therefore, in terms of clause 1.1(a) and 3.8 of policy, petitioner's case falls outside the purview of consideration under the new amended policy of 2013 – Further held – Compassionate appointment is not a vested right and is an exception to the general rule of appointment to public offices – Amended policy 2013 is not tailor made to favour any particular person nor any malafide is reflected – Petitioner's challenge to the amended policy 2013 cannot be accepted – Petitioner not entitled for compassionate appointment – Petition dismissed: *Sanjay Shriwas Vs. The Chairman-cum-Managing Director, M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., I.L.R. (2017) M.P. 1104*

– Delay – Held – Impugned order was passed in the year 2016 whereas petition was filed in the year 2018 – Delay not explained in the petition – Considering the fact that petitioner lost his father, there might be financial crunch before him, thus taking a humanitarian view, delay in filing petition is ignored: *Prashant Sharma Vs. State of M.P., I.L.R. (2019) M.P. *18*

– Delay – Employee died on 09.06.2004 – Application claimed to be submitted on 09.10.2004 – Subsequent representation dated 18.11.2005 making reference of application dated 09.10.2004 – Bank rejecting the application being not submitted within one year of death as per prevailing scheme & treating representation dated 18.11.2005 as first application – Single Judge allowed the petition and directed the appellant bank to consider the proposal for appointment on compassionate ground – Held – Factum of receipt of application dated 09.10.2004 rebutted by appellant, so onus shifted on petitioner to substantiate the factum of dispatch or receipt thereof by the bank – Petitioner failed to do that and as per clause 23 of application dated 09.10.2004, petitioner relied on document issued on 08.06.2005, which in itself

establishes that petitioner is trying to create a false circumstance to further her cause – Petitioner not approached the court with clean hands – Appeal allowed – Impugned judgment set aside – Writ petition dismissed: *Chief General Manager Vs. Smt. Mamta Bai Soni, I.L.R. (2016) M.P. 1621 (DB)*

– Delay – Petitioner's claim for compassionate appointment rejected on the ground that 7 years from the date of death have passed and the policy of State Government regarding compassionate appointment has drastically changed – Held – Petitioner submitted application immediately after the death of his father – Seven years have passed due to exchange of communication between departments of Government of M.P. for which petitioner cannot be held responsible for the delay – Claim of petitioner liable to be considered afresh and delay should not come into play: *Sunil Jain Vs. State of M.P., I.L.R. (2017) M.P. *62*

– Grounds & Criteria – Held – Application for compassionate appointment has to be considered as per policy prevailing at the time of consideration of the application – Full Bench of this Hon'ble Court has held that compassionate appointment is neither a vested right which can be considered at any time even after the crisis created by death of the earning member is over nor it is a hereditary right which can be bequeathed – Impugned order set aside – Writ Appeal allowed: *M.P. Electricity Board, Now-M.P.P.K.V.V. Co. Ltd., Jabalpur Vs. Chandrabosh Tripathi, I.L.R. (2017) M.P. *125 (DB)*

– Grounds & Criteria – Petitioner seeking compassionate appointment upon demise of his father who was working as a constable with GRP – Held – Circular of 2008 and subsequent circular of 2014 of General Administration Department prohibits compassionate appointment where one of the family members of deceased is already in Government employment – In present case, elder brother of petitioner is working with U.P. Police – Mother (wife of deceased) is entitled to receive pension and she can even claim maintenance from his elder son u/S 125 Cr.P.C. – Petitioner not entitled for compassionate appointment – Petition dismissed: *Brijesh Kumar Yadav Vs. State of M.P., I.L.R. (2018) M.P. 2396*

– Scheme – Petitioner's father did not suffer an accidental death while in service and had died on account of heart attack – Petitioner's case does not fall within the scheme of compassionate appointment, 2013 as amended vide notification dated 24.12.2014 – Petition dismissed: *Ankit Verma Vs. M.P. Madhya Kshetra Vidyut Vitran Company, I.L.R. (2016) M.P. 2504*

– Policy – It is the policy prevalent on the date of consideration of the application which is relevant and the subsequent amendment or modification therein would not effect the validity of such consideration – Petition dismissed: *Pinki Yadav (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 1110*

– Purpose, objective and Principle discussed and explained: *Brijesh Kumar Yadav Vs. State of M.P., I.L.R. (2018) M.P. 2396*

– Relevant Policy – Consideration – Held – Although this Court in first round of litigation might have directed respondents to consider petitioner's application as per policy existing on date of death of father/employee, but as per subsequent interpretation of law by Full Bench, it is held that policy which was in existence on date of consideration of application would be applicable, according to which, petitioner was rightly held ineligible for appointment as his elder brother was already in government job – Petition dismissed: *Sunil Raghuvanshi Vs. State of M.P., I.L.R. (2019) M.P. 1383*

– Relevant Policy – Held – Petitioner's application was rejected on basis of policy which came in the year 2014 whereas petitioner lost his father in 2011 – Application has to be decided on the basis of policy which was in vogue at the time of death of father of the petitioner – Impugned order quashed – Petition allowed: *Prashant Sharma Vs. State of M.P., I.L.R. (2019) M.P. *18*

– Relevant Policy & Circular – Held – Circular dated 31.08.16 is not a new policy but a circular by which existing policy of 2014 has been amended – Policy dated 29.09.14 as amended vide Circular dated 31.08.16 ought to have been applied which was in vogue at the time of death of petitioner's father on 04.07.2016 and also at the time of consideration of his application for compassionate appointment – No ground for interference – Appeal dismissed: *State of M.P. Vs. Sonu Jatav, I.L.R. (2019) M.P. 1373 (DB)*

– Married Daughters – State Government Policy, Clause 2.2 – Right of Equality – Entitlement of Married Daughters – Held – Clause 2.2 gives option to living spouse of deceased government servant to nominate son or unmarried daughter – No condition imposed while considering a son relating to marital status, but condition of "unmarried" is affixed for the daughter without any justification – It violates equality clause and cannot be countenanced: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 647 (FB)*

– Married Daughters – State Government Policy, Clause 2.2 – Validity – Entitlement of Married Daughters – Held – Clause 2.2 to the extent it deprives the married daughter from right of consideration for compassionate appointment, is arbitrary and discriminatory in nature and is thus violative of Article 14, 15, 16 & 39(a) of Constitution – Reference answered accordingly: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 647 (FB)*

– Married Daughters – State Government Policy, Clause 2.4 – Validity – Entitlement of Married Daughters – Held – In clause 2.4. government partially

recognized the right of married daughter but it was confined to such daughters who have no brothers – Thus, no reason to declare Clause 2.4 as ultra vires: *Meenakshi Dubey Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 647 (FB)*

– Work charged and contingency paid employee – Compassionate Appointment – Employee died on 29.12.2009 – Petitioner relied on Government Circular dated 14.06.1974 and 31.08.2016 – Application for compassionate appointment rejected on 15.03.2011 – Challenge to – Held – As per the judgment passed by the Full Bench of this Court in Manoj Kumar Deharia, (2010 (3) MPLJ 213) the policy prevailing on the date of consideration of application is to be considered and not the policy on 14.06.1974 or subsequent policy as on 31.08.2016 – Petition dismissed: *Ajay Saket Vs. State of M.P., I.L.R. (2018) M.P. 1922*

13. Confidential Report

– Degrading of entry in confidential report – Reporting Authority awarded "Very good" grading to petitioner – Grading was also accepted by Reviewing Authority, however, the Accepting Authority downgraded the grading – No reason was assigned for downgrading the confidential report – No notice or opportunity of hearing was given to petitioner before downgrading the CR – Action of downgrading the CR is not sustainable in the eye of law – Matter remanded back to Accepting Authority to issue show cause notice indicating the reasons for downgrading of ACRs – After giving opportunity to petitioner, decide the matter in accordance with law within a period of three months – If Accepting Authority does not conclude the procedure within aforesaid time, then the ACRs recorded by Initiating Authority and Reviewing Authority shall be maintained and matter shall be proceeded with in favour of petitioner for grant of promotion and all consequential benefits along with juniors: *R.C. Choudhary Vs. State of M.P., I.L.R. (2016) M.P. 793*

14. Constitution

– Article 311(2)(b) – Dismissal from service – Petitioner dismissed from service on the ground that offence has been registered against him under provisions of Prevention of Corruption Act – Held – In the instant case, neither there was any departmental enquiry conducted nor any charge-sheet was issued – Only show cause notice was issued, statement of petitioner was recorded and authority passed an order of dismissal – Article 311(2)(b) of the constitution provides that where the authority empowered to dismiss or remove a person is satisfied that for some reason to be recorded by the authority in writing that it is not reasonably practicable to hold such enquiry, disciplinary authority can dismiss a person, but in the instant case, impugned order does not reveal any such reason recorded by the authority – Order is

not in consonance with Article 311(2)(b) of Constitution – Further held – Petitioner is still not convicted under the offence of corruption – Impugned order set aside – Respondents directed to reinstate the petitioner – Petition allowed: *Brijpal Singh Vs. Dy. Inspector General of Police, Indore, I.L.R. (2017) M.P. *68*

– Article 320(3) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27(2) – Power of Appellate Authority – Advice from P.S.C. – Disciplinary Authority imposed major penalty to petitioner – In appeal, Appellate Authority opined to reduce the penalty to a minor one – Matter forwarded to P.S.C. for consultation and advice – P.S.C. opined not to reduce the penalty imposed, resultantly Appellate Authority dismissed the appeal – Challenge to – Held – Requirement to consult the M.P.P.S.C and its report/advice is not binding on the disciplinary authority or appellate authority while exercising quasi judicial powers – As per Article 320(3) and Rule 27(2) of the Rules of 1966, authorities may seek advice of P.S.C. – Mere consultation would not mean to affect the proposed punishment – It would amount to abdication of statutory powers of authorities which is not sustainable in eyes of law – Impugned order is quashed and matter remitted to appellate authority to reconsider the matter on point of punishment, uninfluenced with advice of the Commission (P.S.C.) – Petition allowed: *S.K. Agarwal Vs. State of M.P., I.L.R. (2017) M.P. 1840*

15. Daily Wagers

– Amalgamation – Central Government vide notification decided to amalgamate three Regional Rural Banks with the appellant bank whereby services of the daily wagers was decided to be dispensed with – Respondents, daily wage employees filed writ petitions before High Court whereby appellants were prohibited to hand over the petitioners (daily wagers) appointed by the erstwhile Regional Rural Banks to private agency and allow them in service as engaged by the erstwhile Regional Rural Banks – Challenge to – Held – A daily wager, by nomenclature itself is not a regular employee of Bank as there is no established employer and employee relationship – Daily wagers have protection as provided under the Industrial Disputes Act of 1947 but there cannot be any prohibition against employer, not to terminate services of daily wager as it is not even available to regular employees – Services of workmen can be dispensed with as and when it is considered appropriate by following due process of law – Order passed by single bench is set aside – Appeal disposed: *Madhyanchal Gramin Bank Vs. Neeraj Kumar Barman, I.L.R. (2017) M.P. 1633 (DB)*

16. Date of Birth

– Correction – Held – Even if birth certificate found to be genuine, petitioner not entitled for correction of date of birth because she applied at fag end of her

service and she failed to prove that there was any clerical error or negligence on part of employee while recording the same in service book – No case for interference – Petition dismissed: *Hussaina Bai (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 873*

– Correctness of the Matriculation Certificate – ADC (Age Determination Committee) is required to first look into the certificate of matriculation and then to proceed to decide the dispute about the date of birth – Petition allowed: *Matuwarram Chaurasiya Vs. Northern Coalfields Limited, I.L.R. (2016) M.P. 1028*

– Financial Code, M.P., Rule 84 – Alteration of date of birth – Date of birth can be altered only in case of clerical error – The date of birth cannot be permitted to be altered at the fag-end of the career and for computation of retiral dues, date of birth recorded in service record shall be final & determinative – Petition dismissed: *Ramhit Sahu Vs. State of M.P., I.L.R. (2017) M.P. *12*

17. De-Regularisation of Service

– Orders de-regularising the services of the petitioners have been passed after putting 12 years of regular service without holding enquiry in violation of principles of natural justice – Held – As the consolidated seniority list has not been prepared in compliance of order passed in W.P. No. 8359/2005, impugned order has not been passed on the grounds mentioned in the show cause notice, petitioners were never asked to submit documents, their defence has not been considered and they were given only three days time to submit reply – Thus principles of natural justice have been violated – Impugned order is not sustainable: *Dinesh Kumar Jaat Vs. Municipal Corporation, I.L.R. (2016) M.P. 2733*

18. Departmental Enquiry

– De novo Enquiry – First enquiry report dated 01.06.2005 – Challenge as to – Representation by delinquent employee before Disciplinary Authority – Not afforded opportunity of defence – Disciplinary Authority ordered for re-enquiry – Second Enquiry Report submitted on 24.07.2006 – Challenge as to by prosecution – Grounds – Enquiry Officer did not permit the prosecution to lead evidence and directly recorded the statement of defence – Again Disciplinary Authority ordered for de-novo enquiry – Challenge as to – Petition – Whether in the facts and circumstances of the case, de-novo enquiry is permissible – Held – The Second Enquiry Officer did not permit the prosecution to lead evidence and directly recorded the statement of defence – So second enquiry is vitiated from inception because first right of prosecution to establish the charges was taken away – De novo enquiry is permissible on a technical ground or on the ground of procedural infirmity – No fault found in the order impugned – Petition dismissed: *Parmanand Sharma Vs. State of M.P., I.L.R. (2016) M.P. *12*

– Fundamental Rules, 53, 54(4), 54(7) & 54-A(2)(i) – Suspension Period – Calculation of Pay & Allowances – Held – Punishment of compulsory retirement was set aside by Tribunal on violation of natural justice and directed further inquiry, which could not be done despite liberty granted and because of which enquiry stood abated – Petitioner cannot be said at fault for this – Case of petitioner is covered under FR-54-A(2)(i) r/w 54(4), where exoneration of employee is not on merits, subject to FR-54(7), competent authority needs to determine the pay and allowances which shall be above the subsistence allowance and other allowances admissible under FR-53 but cannot be equivalent to full pay and allowances otherwise payable for intervening period – Impugned orders set aside – Matter remitted back to authority for decision afresh – Petition allowed: *K.K. Bajpai Vs. Union of India, I.L.R. (2019) M.P. 1407 (DB)*

– Degree of Proof – Doctrine of Preponderance of Probabilities – Past Conduct & Service Record – Held – It is established law that in departmental enquiry, degree of proof as required in a criminal case where prosecution has to prove the charge beyond doubt is not required to prove misconduct – In the instant case, inebriation of petitioner was proved by Doctor – Doctrine of preponderance of probabilities is applied in such cases – Apex Court held that in case of misconduct of grave nature or indiscipline, authority may consider the past conduct and service record of the delinquent employee: *Rudrapal Singh Chandel Vs. State of M.P., I.L.R. (2017) M.P. 2333*

– Limitation – In 1989, when petitioner was the clerk-cum-cashier, there was a theft in the bank – Safe of the bank was broken and Rs. 4713.15 was stolen – Police report was lodged – On several occasions in 1992, 2005 and 2011, explanation was called from petitioner for the incident whereby petitioner submitted reply but no further action was taken by management – On 24.01.2012, charge sheet issued against petitioner which was later withdrawn because of technical reasons – Again on 10.05.2012, fresh charge sheet issued whereby reply was submitted – On 24.07.2012, management initiated departmental enquiry – Challenge to – Held – Petitioner was not even charged of theft by police, hence departmental proceedings should have been within a reasonable time – Management is totally silent as to why timely action was not taken despite issuing several show cause notices – Such belated charge sheet after 23 years of incident and initiation of departmental enquiry is absolutely arbitrary, unjust and is uncalled for – Charge sheet and order initiating departmental enquiry is quashed – Petition allowed with cost of Rs. 25,000: *Rakesh Katare Vs. The Satpura Narmada Regional Rural Bank, I.L.R. (2018) M.P. 1113*

– Period of Abeyance – Held – As an interim order this Court has directed proceedings to remain in abeyance – Further proceedings in both departmental enquiries

cannot be kept in abeyance for an unlimited period and since the same has been kept in abeyance for a period two years but still criminal prosecution has not come to an end – Interim order vacated – Petitions dismissed: *Balbeer Singh Gurjar Vs. State of M.P., I.L.R. (2019) M.P. *47*

– Procedure – Inquiry Officer – Held – It is trite law that even if there exist some procedural infirmity in departmental enquiry, delinquent employee has to show the prejudice caused to him because of such infirmity in enquiry – Inquiry Officer has not asked any leading questions to petitioner, thus cannot be said that he acted as a prosecutor – Inquiry Officer can put questions to elicit the truth as has been done in present case – Inquiry and decision making process are not vitiated neither any prejudice has caused to the petitioner: *Pramod Kumar Sharma Vs. State of M.P., I.L.R. (2019) M.P. 551*

– Scope of judicial review – Law discussed: *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 689 (DB)*

– Second Charge Sheet – Maintainability – Held – Subsequent charge sheet has not been issued on allegations similar to those which are part of first charge sheet, thus cannot be quashed on the ground of issuance of second chargesheet on similar allegations: *Balbeer Singh Gurjar Vs. State of M.P., I.L.R. (2019) M.P. *47*

– Second Enquiry – Dismissal from Service – Held – Once the previous order of punishment was set aside by this Court in previous round of litigation, it was not open to Disciplinary Authority to give it validity and upheld it – Further, in second enquiry, no evidence could be produced against petitioner – It is a case of no legal evidence against petitioner – Punishment order and Appellate Order cannot sustain judicial scrutiny – Petitioner entitled for all consequential benefits as if he was never subjected to any departmental enquiry – Petition allowed: *Duryodhan Bhavtekar Vs. State of M.P., I.L.R. (2020) M.P. 1877*

– Criminal Trial – Stay of Proceeding – Offence was registered against the petitioner, a Head Constable, u/S 7 of the Prevention of Corruption Act, 1988 – Superintendent of Police also issued charge-sheet for initiation of departmental enquiry – Petitioner seeking stay of the departmental enquiry on the ground that continuation of the departmental enquiry would disclose his defence in the criminal trial because the facts and evidence are identical in both the proceedings – Held – Departmental enquiry shall remain stayed till the conclusion of the criminal trial and at the same time trial court directed to expedite and conclude the criminal trial within a period of one year from the date of this order – Petition allowed: *Hariprasad Gehlot Vs. State of M.P., I.L.R. (2017) M.P. *78*

– Stay of Departmental Enquiry – Petitioner seeking stay of departmental enquiry on the ground that criminal case on the same subject is pending – Held – Stay of departmental enquiry, only when case involves complicated question of law and fact, and stay would not suspend the departmental enquiry indefinitely or delay it unduly – Charges framed in criminal case & departmental enquiry are not identical – Charges do not involve complicated question of law & facts – Petition dismissed: *Pramod Kumar Udand Vs. State Bank of India, I.L.R. (2016) M.P. 2773*

19. Deputation

– Practice – Petitioner granted permission from parent department to participate in selection process whereby he was selected and was appointed as Deputy Director on deputation – Subsequently, parent department did not relieve him and withdrawn the permission earlier granted – Challenge to – Held – Petitioner has a lien on the substantive post of parent department where he was appointed to render service, they being the employer/master of petitioner has every right to decide whether the services of petitioner are required with the parent department – Permission cannot be treated as indefinite license to join the post as deputationist – In administrative exigency, parent department can very well review its decision and can take a different view, such decision is neither without jurisdiction nor arbitrary or capricious in nature – Further held – Employee has no indefeasible right to continue as deputationist or get absorbed in the borrowing department – In the present case, petitioner did not join the borrowing department as deputationist and thus no legal, vested or constitutional right of petitioner is infringed – Petition dismissed: *Sunil Singh Baghel (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1374*

– Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 86 & 95 – Madhya Pradesh Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules 2008 – Policy – Whether the posting of teachers teaching in schools in Panchayat area to Model or Excellent Higher Secondary Schools within the same district run by the State Government amounts to deputation – Held – Teachers teaching in schools in Panchayat area are paid by the State Government out of the funds allocated by the State Government and State Government having overall control over such schools through Collectors and DEOs – Such teachers though under rules being under the control of Zila Panchayat, if are posted in Model or Excellent Higher Secondary School within the same district run by the State Government, cannot be said to be on deputation: *Komal Kumar Kanjoliya Vs. State of M.P., I.L.R. (2016) M.P. 2258*

20. Disciplinary Authority

– Appointment & Competency of Inquiry Officer – Held – Petitioner has not raised any such objection during the course of inquiry – Inquiry Officer was a

retired Board Officer and therefore question of equivalence of status with petitioner does not arise – Since petitioner submitted to the jurisdiction of Inquiry Officer and participated in the inquiry without any demur, inquiry cannot be declared illegal on the ground of appointment, competency and continuance of Inquiry Officer, especially when no prejudice is shown by the petitioner against it: *R.K. Rekhi Vs. M.P.E.B., Rampur, Jabalpur, I.L.R. (2018) M.P. 906*

– Appreciation of Evidence – Held – Appreciation and assessment of material brought on record by department and delinquent is within the exclusive domain of disciplinary authority and cannot be faulted unless conclusions drawn by the authority suffer from the vices of (i) Jurisdiction; (ii) perversity of approach when relevant materials are ignored and irrelevant materials are considered while recording findings; (iii) conclusions drawn by authority are such which no man of common prudence shall arrive at, and (iv) conclusions are lacking in bonafides applying principles of Wednesbury reasonableness: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1086*

– Protection of Human Rights Act, 1993 (10 of 1994) – Section 18(b) – M.P. Human Rights Commission – Scope – Commission cannot be allowed to step into the shoes of government and assume the role of appointing/disciplinary authority – Commission is not an adjudicatory body: *Amarnath Verma Vs. State of M.P., I.L.R. (2019) M.P. 807*

21. Disciplinary Proceeding

– Judicial Review – Scope of Interference – Held – Although the scope of interference is limited on a disciplinary proceeding but if decision making process runs contrary to principle of natural justice and such violation causes prejudice to the delinquent employee and if findings of enquiry officer are perverse and not based on material on record, interference can be made – If punishment is shockingly disproportionate, the Court can interfere with the quantum of punishment: *R.K. Rekhi Vs. M.P.E.B., Rampur, Jabalpur, I.L.R. (2018) M.P. 906*

– Punishment – Consultation with Commission – Held – When any advice is given by Commission and used against delinquent for imposing penalty, then rule of natural justice requires that copy of same be supplied to delinquent – In present case, no such advice has been taken from Commission – If disciplinary authority has not consulted with Commission, order of punishment is not vitiated or makes the decision making process defective – It does not violate principle of natural justice – Petition dismissed: *Anil Pratap Singh Vs. State of M.P., I.L.R. (2020) M.P. 1858*

– Competent Authority – Principle of Service Jurisprudence – Held – In absence of any provisions in any Act or Rules, vesting any particular authority with

power to initiate disciplinary proceedings in specific terms, trite principle of service jurisprudence will follow whereby any authority senior to or having administrative control over employee will be competent to initiate disciplinary proceedings or issue charge-sheet: *State of M.P. Vs. Pradeep Kumar Sharma, I.L.R. (2020) M.P. 1066 (DB)*

– Initiation of Disciplinary Proceedings & Imposing Penalty – Competent Authority – Held – Concept of initiating disciplinary proceedings and imposing penalty at end of disciplinary proceedings are distinct especially from the point of view of competence of authority to initiate and punish – Issuance of charge-sheet/initiation of disciplinary proceedings is not a punishment: *State of M.P. Vs. Pradeep Kumar Sharma, I.L.R. (2020) M.P. 1066 (DB)*

22. Dismissal

– Departmental Enquiry – Dismissal – Acquittal from Criminal Case – Effect – FIR for offence u/S 354 IPC registered against appellant (bank employee) – Magistrate convicted the petitioner – In appeal, conviction was set aside – In the departmental enquiry appellant punished with order of dismissal – Appellant filed writ petition which was dismissed – Challenge to – Held – Punishment imposed on appellant is not based on conclusion of criminal trial but on findings recorded in enquiry on deposition of witnesses – Adequacy of evidence cannot be a subject matter of judicial review – Interference can only be made if findings are perverse or it is a case of no evidence – Exoneration from criminal case does not mechanically exonerate the employee from departmental enquiry/punishment – Order is in accordance with law and punishment is not disproportionate or shocking, warranting interference – Appeal dismissed: *R.K. Solanki Vs. Central Bank of India, I.L.R. (2018) M.P. 1051 (DB)*

– Disciplinary Proceeding – Dismissal from Service – Second Show Cause Notice – Disproportionate Punishment – Concluding the disciplinary proceedings, punishment of dismissal from service was inflicted on petitioner – Review petition was also dismissed by Board – Challenge to – Held – This Court cannot act as a de novo enquiry officer and cannot re-appreciate the evidence and reach to a different conclusion – If findings recorded are not contrary to evidence, no interference can be made – Further held – After the 42nd amendment in Constitution of India, issuance of second show cause notice proposing punishment is no more a legal requirement – From the material available, it can be held that petitioner was guilty for issuing direction in negligent manner and without any justification but it cannot be said that he is guilty of misappropriation – This Court may itself in exceptional and rare cases impose appropriate punishment on delinquent employee – Since petitioner has rendered 34 years of unblemished service and was due for retirement within a week from the date of dismissal and since misappropriation was not proved, such harsh punishment

was not required – Punishment of dismissal from service modified to compulsory retirement – Petition allowed to such extent: *R.K. Rekhi Vs. M.P.E.B., Rampur, Jabalpur, I.L.R. (2018) M.P. 906*

– Disciplinary Proceedings – Dismissal – Interference – Jurisdiction of Writ Court – Held – Court should not interfere with the administrative decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards – High Court is not a court of appeal under Article 226 over the decision of authorities holding a departmental enquiry against a public servant – Power of judicial review is not directed against the decision but is confined to the decision making process in exercise of supervisory writ jurisdiction – It is not a requirement that delinquent employee should be given an opportunity to show cause after the finding of guilt as to the quantum of punishment – Delinquent submitted his written reply and also availed the opportunity of hearing – Further held – Unless the delinquent is able to show that non-supply of report of inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated – Single bench of this court has acted as a Court of appeal against the findings recorded by disciplinary and Appellate authority and not only interfered with the order of punishment but also ordered reinstatement – Such interference is unwarranted in law and is beyond the scope of Writ Court – Order passed by Single Bench set aside – Appeal allowed: *State of M.P. Vs. Dr. Ashok Sharma, I.L.R. (2018) M.P. 352 (DB)*

– Backwages – Grounds – Illegal release of pension of a widow to incompetent person – Held – As per Tribunal's finding, pension illegally withdrawn from July 2007 to Nov 2009 and respondent joined in 2009 – Being a peon, he has no control over process of sanction/release of pension – Other officers who were responsible for issuance of pension were given minor punishments – Respondent was unnecessarily victimized and subjected to discriminatory and disproportionate punishment – Tribunal rightly granted 30% backwages – Petition dismissed with cost of Rs. 25,000 to be paid to respondent: *Union Bank of India Vs. Vinod Kumar Dwivedi, I.L.R. (2020) M.P. 2656*

– Departmental Enquiry – Grounds – Held – Petitioner submitted attestation form in respect of his candidature for post of police constable, deliberately suppressing the fact of pending criminal case against him – Such charge is enough to dismiss petitioner from service – Petitioner being a member of disciplined police force, cannot be permitted to remain in employment when he deliberately suppressed material fact and given incorrect information in attestation form – Punishment is not shockingly disproportionate/harsh – Petition dismissed: *Pramod Kumar Sharma Vs. State of M.P., I.L.R. (2019) M.P. 551*

– Police Regulations, Para 64 – Petitioner, head constable alongwith three other constables were assigned a duty of custody of an accused who was taken to hospital – Accused fled away – Joint enquiry by the department – One Naresh Singh (constable) was found negligent and responsible for the incident whereby he was dismissed from service – Petitioner was not found guilty by enquiry officer – Disciplinary Authority disagreed with the appreciation of evidence by Enquiry Officer and again issued notice to petitioner and ordered punishment of dismissal to petitioner – Appellate Authority modified the punishment to compulsory retirement – Petitioner's mercy appeal was also dismissed – Challenge to – Held – Disciplinary authority gave a reasoning that petitioner, being head constable did not exercise proper supervision and control on other constables which led to escape of accused – Further held – For the act of negligence and omission of Naresh, punishment imposed on petitioner of compulsory retirement depriving him of his service tenure is a disproportionate penalty moreso in view of the fact that during his service tenure, he has earned 170 awards – Matter remanded back to appellate authority for imposition of lesser punishment – Petition partly allowed: *Rajendra Singh Kushwah Vs. State of M.P., I.L.R. (2017) M.P. 1086*

23. Equal Pay for Equal Work

– Principle – Interpretation – Held – The Apex Court has concluded that principle/doctrine of equal pay for equal work can only apply if employees are similarly situated and there is complete and wholesale identity between two groups – Principle/ Doctrine cannot be applied only because nature of work is same, unless there is parity in mode of appointment, experience and educational qualifications between them: *State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla, I.L.R. (2017) M.P. *149 (DB)*

– Class III (Non-Ministerial and Ministerial) Jail Service Recruitment Rules, M.P., 1974 Schedule Sr. No. 7 & 8 – Music Teacher – Principle of Equal Pay for Equal Work – Pay Scale – Held – Qualifications and duties of a Music Teacher of educational department and that of Jail department are different – Duties in educational department is full time whereas in jail, it is of temporary nature and require only for those prisoners who opt for music – Respondent, a music teacher in jail department not entitled for same pay scale as of the one in educational department – Principle of equal pay for equal work not applicable in the present case – Impugned order set aside – Appeal allowed: *State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla, I.L.R. (2017) M.P. *149 (DB)*

24. Fundamental Rules

– Rule 9(17) – Transfer – Petitioner has been posted from one office to another in District Bhopal – Petitioner posted in Bhopal for last more than 13 years –

Order cannot be treated as a frequent transfer order but it is only a local arrangement – Clause 11.1 of Transfer Policy specifically prescribes that transfer from one office to another in the same head office is a local arrangement and it would not be treated under the category of transfer – Petitioner failed to point out violation of any statutory rules as well as failed to point out that impugned transfer order has been issued with mala fide intention – Petition dismissed: *Sushil Kumar Tiwari (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *44*

– Rules 12(A), 13, 14(A) & 14(B) – "lien" – Held – Concept of "lien" is directly relateable to substantive mode of recruitment preceding every appointment on a civil post: *State of M.P. Vs. Rajendra Kumar Jain, I.L.R. (2018) M.P. 2880 (DB)*

– Rule 53 – Revision of Subsistence Allowance – Pendency of criminal case – Claim for increase of subsistence allowance from 50% to 75% – Held – If the period of suspension is prolonged beyond three months and if the delay is not attributable to the Government Servant, the employer is under an obligation to consider the aspect of revision of subsistence allowance – Provision does not make any distinction between suspension because of D.E. and suspension because of any criminal case – Since there is no assertion about the aspect of delay in the revision application, liberty is given to the petitioner to make comprehensive representation and employer shall decide the same preferably within 30 days: *Rajesh Patel Vs. MP PKVV Co. Ltd., I.L.R. (2017) M.P. 801*

– Rule 54 & 54-A – Suspension – Arrears of Pay – Petitioner was facing trial u/S 354 IPC and later secured acquitted on basis of compromise – Held – Full Bench of this Court concluded that acquittal on basis of compromise cannot be held to be honourable acquittal – No fault found, if department refused to pay arrears of salary for period of suspension – Petition dismissed: *Vijay Manjhi Vs. State of M.P., I.L.R. (2020) M.P. *22*

– Rule 54-B – Suspension – Salary & Allowances – Opportunity of Hearing – Held – As per GAD Circular of State, if suspended employee is imposed a minor penalty, then suspension was not warranted and employee is entitled to receive full pay and allowances for suspension period – In instant case, minor penalty was imposed while concluding departmental enquiry against petitioner – Suspension was found to be wholly unjustified in terms of FR-54-B – No opportunity for making representation was given to petitioner before passing impugned order – Respondent directed to pay full salary and allowances to petitioner for suspension period – Petition partly allowed: *Haridas Bairagi Vs. State of M.P., I.L.R. (2019) M.P. *49*

– Rule 54 & 54-A(2)(i) – Suspension Period – Major & Minor Penalty – Held – This Court earlier opined that where departmental proceedings against suspended employee for imposition of major penalty finally ends with imposition of

minor penalty, the intervening period must be treated as "spent on duty": *K.K. Bajpai Vs. Union of India, I.L.R. (2019) M.P. 1407 (DB)*

25. Horizontal/Vertical Reservation

– Horizontal Compartmentalised Reservation – Procedure – Held – As per advertisement, reservation for OBC Police Personnel was horizontal compartmentalised reservation, thus respondents being OBC Police Personnel are not entitled to appointment against open general category post on the ground that they received more marks than the last candidate of open general category – Procedure explained – No migration of OBC Police Personnel to general category post is permissible – Petition dismissed – Revision Petition allowed: *State of M.P. Vs. Uday Sisode, I.L.R. (2019) M.P. 2022 (DB)*

– Vertical Reservation & Horizontal Reservation – Held – Apex Court concluded that under vertical reservations, candidates of SC, ST, OBC are allowed to compete and appointed against the non-reserved post, but that is not so in case of horizontal reservation – Further, in case of compartmentalised horizontal reservation, process of verification and adjustment should be applied separately to each of the vertical reservation: *State of M.P. Vs. Uday Sisode, I.L.R. (2019) M.P. 2022 (DB)*

26. Increment

– Entitlement – Held – (A) An employee appointed in accordance with the Recruitment Rules which makes passing of the Hindi Typing Test essential, would be entitled to increment only after passing such test – (B) If the Recruitment Rules are silent with regard to entitlement to the grant of increment on passing the Hindi Typing Test, then in such a case if the requirement of passing Hindi Typing Test is incorporated in the letter of appointment, the employee would be entitled to increment only after passing the Hindi Typing Test – (C) Where the Recruitment Rules provide that preference would be given to the candidate who has passed Hindi Typing Test, in such a case also the employee would not be entitled to grant of increment, if the order of appointment contains such a stipulation. He would be entitled to grant of increment from the date of passing Hindi Typing Test – (D) Where under the policy as well as letter of appointment provide for passing of Hindi Typing Test, in such a case the employee would be entitled to increment only after passing Hindi Typing Test – (E) If an employee has been appointed under the policy either of compassionate appointment or regularization and if policy provides for requirement of passing Hindi Typing Test essential, the concerned employee would be entitled to benefit of increment only after having passed Hindi Typing Test, even in the absence of such a stipulation in the letter of appointment – (F)The decision rendered in the case of State of M.P. Vs. Onkarlal, 2011(3) MPLJ 404 and State of M.P. & ors. Vs. Ku. Ramani Bai Bhagat,

2013(1) MPHT 96 do not lay down correct proposition of law: *Manoj Kumar Purohit Vs. State of M.P., I.L.R. (2016) M.P. 1861 (FB)*

– Entitlement – Held – A daily wager who is declared permanent by classification by the employer merely on completion of 240 days of service, without any judicial intervention is not entitled to claim increments in regular pay scale which is only admissible to regular employees who are inducted in service by following statutory recruitment rules/constitutional provisions – Even Standard Standing Orders does not vest any right to such classified employees to receive salary and service benefits equivalent to regular employee – Such classified employees however is eligible to all pecuniary and service benefits which flow from different industrial statutes – Order under review set aside – Review petitions allowed: *State of M.P. Vs. Rajendra Kumar Jain, I.L.R. (2018) M.P. 2880 (DB)*

– Recovery – Permissibility – Held – Once the benefit has already been extended to petitioner on account of judgments delivered by Single Bench as well as by Division Bench of this Court, only because subsequently Full Bench has delivered a judgment regarding grant of increments, the benefit which has already accrued in favour of petitioner cannot be withdrawn – Recovery order passed by respondents is quashed – Petition allowed: *Raghav Singh Chouhan Vs. State of M.P., I.L.R. (2017) M.P. *158*

27. Kramonnati

– Grant of Kramonnati – Held – That, the person is recruited by an organisation not just for a job, but for a whole career – The opportunity for advancement is an incentive for personnel development – Further, there cannot be any modern management, man power development etc. which is not related to a system of career progression – Hence, govt. cannot deny the facility of financial kramonnati: *Arun Kumar Singh Vs. State of M.P., I.L.R. (2016) M.P. 747*

28. Minimum Pay Scale

– Minimum pay scale as per recommendation of 6th Pay Commission – Earlier Writ Petitions were filed which were allowed and respondents granted pay scale to the petitioners as prayed – Petitioner is identically placed person – Respondents cannot be permitted to discriminate the identically placed person – Petition allowed: *Sunil Kumar Daya Vs. State of M.P., I.L.R. (2016) M.P. 1653*

29. Negative Equality

– Benefits of Regular Employees – Principle of Negative Equality – Petitioner (compassionate appointment), was later classified on post of Water-women

– Held – Petitioner granted the lowest pay scale without any increment and if by mistake a benefit has been granted to any other employee for which he is not entitled, the principle of negative equality cannot be applied, thus petitioner cannot be granted the same benefits – Petition dismissed: *Gomati Bai (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *67*

30. No Work No Pay

– Recovery of monetary benefits – The Principle of "No work no pay" would not be applicable universally, but would apply in such cases where the employee himself was found responsible for not discharging the duties of the post – In a case where the employer was in fault in not allowing the employee to work on a post carrying higher pay scale because of any reason, the principle of "No work, no pay" would not be attracted – Order directing recovery of monetary benefit retrospectively set aside – Petition allowed: *Shashi Prabha Pandey (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 1884*

31. Pension, Gratuity & Retiral Dues

– Conviction – Conviction u/S 324/34 IPC and Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Petitioner, a government high school teacher, suspended from service due to conviction u/S 324/34 IPC – After retirement, he was deprived from the fruits of pension and other retiral dues – Held – Offence punishable u/S 324 IPC does not involve moral turpitude – Trial Court's judgment reveals that a private dispute resulted into a criminal case which has no impact on the society or public at large – Petitioner was not punished for any heinous offence – Stoppage of full pension amounts to inflicting punishment of financial death sentence – Respondents directed to pay pension and other retiral dues from the date of his retirement within three months, failing which delayed payment will carry 12% interest – Respondents may deduct the subsistence allowance and provisional pension already paid to petitioner – Petition allowed: *Mahima Chand Gangwar Vs. State of M.P., I.L.R. (2017) M.P. *70*

– Stoppage of Pension – Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Opportunity of Hearing – Natural Justice – Conviction u/s 7 of Prevention of Corruption Act, 1988 against which, appeal is pending – Stoppage of pension of petitioner without issuing any show cause notice and without giving any opportunity of hearing – Held – After retirement, pensioner is entitled to pension in view of his past service under the State – An employee earns his pension by serving the State for many years – Pension is not a bounty – Deprivation of pension affects civil rights of pensioner, the means of his survival – Show cause notice is required to be given to the retired government servant convicted by the Criminal Court – Natural justice warrants that opportunity of hearing is required to be provided before an order of

stoppage of pension is passed u/R 8(2) of the Rules of 1976 – Reference answered accordingly by majority: *Ram Sewak Mishra Vs. State of M.P., I.L.R. (2017) M.P. 2076 (FB)*

– Withdrawal of Pension – In case of withdrawal of pension to which it has already been granted for about 24 years, without opportunity to explain the circumstances as specified in the circular, cannot be said to be in conformity to the spirit of Rule 9 – Clause (Kha) of GAD circular except the condition to pass an order by council of ministers is contrary to Rule 9 and is unreasonable – Circular C-6-2/98/3/1 dated 08.02.1999 is arbitrary, unjustified, unreasonable and violative of principle of natural justice – Also contrary to spirit of Rule 9 – Hereby quashed: *Nirmal Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 856*

– Payment of Gratuity Act (39 of 1972), Section 2(e) & 14 and Central Civil Services (Pension) Rules, 1972, Section 37-A(4) & (21) – Gratuity – Entitlement – Held – Erstwhile employees of DOT after their absorption were no more a government employee and are thus covered under definition of "employee" under the Gratuity Act – Merely because government has taken liability to pay pensionary benefits of absorbed employees, they cannot be termed as government employees – Right of employee cannot be defeated by any option/contract or instrument – Employees entitled to get their gratuity computed under Gratuity Act, being more beneficial – Employer/BSNL directed to compute gratuity as per revised pay scale and in consonance with Gratuity Act – Petition by employer/BSNL dismissed: *Chief General Manager Vs. Shiv Shankar Tripathi, I.L.R. (2019) M.P. 328*

32. Principle of Natural Justice

– Principle of Audi Alteram Partem – Held – Apex Court has concluded that audi alteram partem is one of basic pillars of natural justice which means no one should be condemned unheard – Whenever possible, it should be followed but it is not necessary where it would be a futile exercise or where the result would remain the same – A Court of Law does not insist on useless formality – In the instant case also even though notice was issued by respondents to petitioner, the result would remain the same: *Shanti Verma (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2134*

– Show Cause Notice – Held – Opportunity of hearing must be provided to petitioner by the Committee which examined his qualification and concluded the matter – Earlier show cause notice which was finally culminated in the order which has been quashed by High Court, is not compliance of principle of natural justice – If order carries civil consequences, principle of natural justice has to be followed by providing opportunity of hearing to sufferer – Impugned order quashed – Petition allowed: *Sheikh Mohd. Arif Vs. Dr. Hari Singh Gaur University, Sagar, I.L.R. (2020) M.P. 140*

33. Promotion

– DPC for Promotion and Annual Confidential Report – Consideration – Held – For the year 1989-90, as petitioner has worked for less than 90 days in the Beej Nigam on deputation, respondents should not recorded his CR for this year and taking into consideration the CR of the six months, i.e. of the longer period, respondents should have graded him as 'Kha-Good' – Original record of DPC shows that ACR for the year 1990-91 was never communicated to petitioner and thus such un-communicated ACR should not have been taken into consideration while declaring the petitioner unfit for promotion – Impugned orders set aside – Respondents directed to reconsider the case of petitioner for promotion to the post of Joint Director by constituting a review DPC – *Writ Petition allowed: T.P. Sharma Vs. State of M.P., I.L.R. (2018) M.P. 443*

– Effect of interim order – Petitioner working as Sub Engineer was promoted as Asstt. Engineer, the said promotion was cancelled by the respondent – Petitioner challenged the cancellation order – The effect and operation of cancellation order was stayed by the Court – The question involved, whether on dismissal of writ petition the petitioner is entitled to get the pension benefit by treating himself as Asstt. Engineer – Held – Stay of operation of order means that the order impugned very much exists but its operation is kept in abeyance because of the order of the Court – If ultimately the petition is dismissed or interim order is vacated, the order which was stayed comes into operation – Further held, petitioner is not entitled to get the benefit of pension for the aforesaid post: *Natthu Singh Chauhan Vs. State of M.P., I.L.R. (2016) M.P. 54*

– Consequential Benefits – Held – Respondents are directed to issue order of promotion to petitioner/other petitioners with all consequential benefits w.e.f. date on which her/their juniors stood promoted: *Sangeeta Soni (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *145*

– Existence of Post – Petitioners promoted to post of "Tower Wagon-cum-Vehicle Driver" – Held – It is only the post of "Tower Wagon Driver" in cadre of Railway Board and there is no post of "Tower Wagon-cum-Vehicle Driver" – Officer of a Division of Railway cannot create a post by their own, inconsistent to the Rules – In order of promotion, misnaming the post or mentioning of non-existing post by department will not debar petitioners from getting benefits as applicable to actual promotional post – Department bound to issue fresh order of promotion mentioning correct name of the post, whereby all consequential benefits will be granted – Petitions allowed: *P.N. Vishwakarma Vs. Union of India, I.L.R. (2019) M.P. 1083 (DB)*

– Sealed Cover Procedure – Crucial Date – Held – For deciding the question whether sealed cover procedure is to be adopted or not, the crucial date is the date of holding DPC when consideration is made for promotion and not the eligibility date which may be a prior date than the date of holding DPC – Appeal dismissed: *Omprakash Singh Narwariya Vs. State of M.P., I.L.R. (2020) M.P. 1079 (DB)*

– Sealed Cover Procedure – Principle & Object – Held – Principle behind concept of sealed cover procedure is that any employee/officer against whom disciplinary proceedings or criminal prosecution has commenced should not be promoted – Concept further discussed and explained: *Omprakash Singh Narwariya Vs. State of M.P., I.L.R. (2020) M.P. 1079 (DB)*

– Staff Nurses are entitled to be promoted on the post of Sister Tutor after obtaining degree in B.Sc. (Nursing) from M.P. Bhoj Open University – Government had itself allowed the University to conduct aforesaid course – Action of State Government as well as Indian Nursing Council and the assigned reasons for denying such promotion is arbitrary, unjust and without application of mind – Impugned order and letter quashed – Petitions allowed: *Sangeeta Soni (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. *145*

– Upgrading of Adverse Confidential Remarks – Applicability – Held – Once adverse confidential remarks of employee are upgraded then it has to be presumed that earlier remarks were wiped out from very inception – Principle of prospective application cannot be applied – Claim of petitioner for reconsideration of her case for promotion has been wrongly rejected – Respondents directed for review DPC to consider entitlement of petitioner: *Rekha Singhal Agrawal (Smt.) Vs. State of M.P., I.L.R. (2019) M.P. *63*

– Value of Assessment made by the reporting officer in ACR – Held – Assessment made by the reporting officer is of paramount importance in the series of the authorities which assessed the performance of an employee for the purpose of Writing ACR and cannot be overlooked or ignored by the reviewing officer or accepting officer in a casual manner – Objectivity is required to disagree with the assessment of reporting officer so as to reach to a conclusion about the exact performance of the employee – Held – ACRs should not be used as a tool to settle scores – Petitioner constantly received excellent grades by his reporting officer – Respondents directed to consider the case of the petitioner on his filing representation and to convene review DPC, if petitioner is found eligible: *Shyam Kishore Dixit Vs. State of M.P., I.L.R. (2016) M.P. 1977*

– Timescale (Krammonati) – Entitlement – Held – Appellant promoted on 10.07.2009 which he had forgone – Subsequently he became entitled for timescale

w.e.f. 22.07.2010 after completing 12 years of service in UDT cadre – If person forgoes his promotion, he would not be subsequently entitled for krammonati – Appeal dismissed: *Premlata Raikwar (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2532 (DB)*

– Timescale (Krammonati) – Held – If proposition of appellant that even after refusing promotion he can avail Krammonati is accepted, then the raison d'etre of financial-upgradation scheme which is to weed out career stagnation of employees, would be frustrated – The day appellant refused to accept promotion, he could no longer be called a stagnating employee: *Premlata Raikwar (Smt.) Vs. State of M.P., I.L.R. (2020) M.P. 2532 (DB)*

– Retrospective Promotion – Arrears of Salary – Petition against non grant of monetary benefits on account of retrospective promotion – Respondent Department, on 02.08.2014 passed an order granting promotion to petitioner w.e.f. 25.02.1992 subject to no work no pay – Challenge to – Held – Petitioner was not at fault in matter of grant of promotion and it was fault of employer, he was not promoted and not permitted to work on the promotional post – Once petitioner has been promoted after rectifying the mistake by State Government, he is entitled for all consequential benefits – No justifiable reason is available with State Government to deny promotion and arrears of salary – Impugned order to the extent of applying principle of "No Work No Pay" is quashed – Petitioner shall be paid arrears of salary from the date of promotion – Respondents further directed to revise pension fixation and also to pay arrears of pension and other terminal dues alongwith an interest of 12% p.a. from the date of entitlement – Petition allowed: *Doulatram Barod Vs. State of M.P., I.L.R. (2018) M.P. 883*

– Running Allowance – Held – Petitioners promoted as "Tower Wagon Driver" and are entitled to get the benefits of the running staff as permissible under the Board's decision – For grant of running allowance, Circular of the Board would be applicable to petitioners – Action of authorities is arbitrary and capricious: *P.N. Vishwakarma Vs. Union of India, I.L.R. (2019) M.P. 1083 (DB)*

– Wrongful Denial of Promotion – Arrears of salary – Entitlement of difference of salary – Held – Once this court in earlier round of litigation held that promotion of petitioner was wrongly denied and such denial is not based on any reason attributed to the petitioner, and at the same time there is no restriction in law for grant of arrears of salary to him, he is entitled to relief of difference of salary – Further held – State should have justified its claim being a welfare State – Petitioner is also entitled to interest on the arrears of salary @ 9% per annum from the date the arrears became due till realization – Petition allowed: *Manohar Lal Vs. State of M.P., I.L.R. (2017) M.P. *52*

– Municipal Service (Executive) Rules, M.P., 1973, Schedule 2, Entry No. 10 – Promotion – Count of Service – Held – Services rendered by petitioner as Assistant Project Officer shall be treated as services rendered as CMO, (Class-C) for purpose of counting experience for promotion on post of CMO, (Class-B) – Petition disposed: *Shivlal Jhariya Vs. State of M.P., I.L.R. (2019) M.P. 1014*

– Public Services (Promotion) Rules, M.P. 2002 – Rule 7 – Denial of promotion on the basis of down graded ACRs done by the final authority without any cogent reason – ACRs were not communicated to the petitioner enabling him to represent for restoration of the original grading – Same were also not reassessed by DPC – Held – Merely on the basis of down graded ACRs promotion could not have been denied – It was necessary for the DPC to reassess the down grading of ACRs as the concerned ACRs were required to be considered by DPC for promotion – Matter is remitted back to DPC to reassess the grading for grant of promotion in terms of norms adopted by the DPC dated 26.05.1981 and if the petitioner found fit necessary order of promotion with retrospective effect and consequential benefits be issued – Pensionary claims be also revised accordingly – Petition is allowed: *Tara Chand Soni Vs. State of M.P., I.L.R. (2016) M.P. 1283*

– Public Services (Promotion) Rules, M.P. 2002, Rules 4 & 6 – Maintainability of Writ Petition – Objection on the ground that all the promotees are not impleaded – Held – Since the immediate juniors who are promoted are impleaded as respondents, petitions are maintainable: *Vyankatacharya Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 3238*

– Veterinary Services (Gazetted) Recruitment Rules, M.P., 1966 and Public Services (Promotion) Rules, M.P. 2002, Rules 4 & 6 – Seniority–cum-merit/ fitness – Criteria for grant of promotion – Procedure adhered to by the Departmental Promotion Committee by laying down the criteria introducing the element of merit having overriding effect on seniority cannot be given the stamp of approval and the non-promotion of seniors as compared to juniors on the basis of these criteria deserves reconsideration on the basis of above analysis by holding a review Departmental Promotion Committee, wherein if seniors are adjudged suitable, the juniors who were promoted on the basis of criteria found to be contrary to Rule 4 & 6 of M.P. Public Services (Promotion) Rules, 2002 will have to give way – Petitions allowed: *Vyankatacharya Dwivedi (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 3238*

34. Recovery of Excess Pay

– Pay Revision Rules, MP, 2009 – Recovery of Excess Pay – Permissibility – Written Undertaking – Petitioner was paid excess amount during pay fixation – Respondents passed order of recovery of excess amount – Challenge to – Held –

Petitioner belongs to Class III services and is due to retire on January 2018, i.e. within one year of the order of recovery – Excess amount has been made for a period in excess of 5 years from date of impugned order – Further held – Recovery is impermissible in law – Petitioner is going to retire within a month, hence despite undertaking, she is entitled for a relief of quashing of impugned recovery – Impugned order quashed – Petition allowed: *Jayanti Vyas (Smt.) Vs. State of M.P., I.L.R. (2018) M.P. 673*

35. Recovery/Judicial Proceedings after Retirement

– Superannuation – Petitioner attained superannuation on 31.01.1991 w.e.f. 01.02.1991 – Getting full pension on issuing PPO by State Government – Offence registered against him on 25.01.1995 – Challan filed on 11.01.1998 – Date of institution of criminal case against petitioner was after 6 years and 11 months, which is not permissible as per Rule 9(3) of Pension Rules – In case, judicial proceedings is barred looking to the date of institution – Government cannot take decision of withdrawal of pension – Decision taken by the council of ministers in the name of governor without taking note of the said discussion is contrary to spirit of Rule 9 – Pension is hard earned benefit which accrues to an employee and is in the nature of "Property" – Right of property cannot taken away without the due process of law – Order of withdrawing pension is wholly unjustified, unreasonable, arbitrary and violative of principles of natural justice, liable to be quashed: *Nirmal Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 856*

– Pension Rules, M.P., 1976, Rule 65 – Recovery after retirement – Undertaking – After retirement of petitioner, department made a recovery of Rs. 2,09,595 from his gratuity amount on the ground that excess amount has been paid to him during his service period – Held – Undertaking given by petitioner was in respect of Pay Revision Rules, 1987 whereas recovery has been made because of mistake in calculation in respect of pay fixation under Pay Revision Rules, 1983 – Undertaking has to be in respect of the same pay scale under which benefit/excess amount is granted to employee – Respondent State could not show any undertaking in respect of relevant Pay Revision Rules – Recovery made from petitioner after his retirement is not sustainable in law – Respondents directed to return back the recovered amount to petitioner – Impugned recovery orders quashed: *Chandramani Prasad Mishra Vs. State of M.P., I.L.R. (2018) M.P. *41*

– Recovery – Petition seeking quashment of order of recovery – Petitioner retired from service as class III employee – At the time of payment of his retiral dues, an order of recovery of dues was passed on the ground that pay fixed at the time of initial appointment was incorrect – Challenge to – Undertaking given by petitioner for recovery of excess amount at the time of pay fixation – Held – The said

undertaking was obtained from the petitioner at the time of extending the benefit of pay revision and such an act of petitioner cannot be said to be a voluntary act – Order of recovery quashed – Petition allowed: *Vijay Shankar Trivedi Vs. State of M.P., I.L.R. (2018) M.P. 682*

– Recovery of Excess Payment – Ground – Excess amount paid to petitioner (a retired employee) was deducted from his pension payment order – Challenge to – Held – In view of the ratio laid down by Apex Court in case of Jagdev Singh and the undertakinggiven by petitioner regarding recovery of excess payment made, same may be recovered from his pensionary benefits – Recovery made is proper – Petition dismissed: *Ashraf Khan Vs. State of M.P., I.L.R. (2017) M.P. *123*

36. Recruitment/Suitability & Eligibility

– Criminal Antecedents – Suitability of Candidate – Post of Assistant Grade III in Excise Department – Held – Although said post do require public standard and integrity but it may differ in comparison to any post in Police Department – Respondents committed material illegality in not considering suitability of petitioner in said post – Petitioner has not suppressed any material fact and disclosed registration as well as outcome (acquittal) of criminal cases – Impugned order quashed – Respondents directed to reconsider suitability of petitioner on said post – Petition allowed: *Jitendra Kumar Gupta Vs. State of M.P., I.L.R. (2020) M.P. *26*

– Domicile Certificate – Petitioner producing domicile certificate of father in which her name was mentioned as minor daughter – Held – After attaining majority, person is required to obtain domicile certificate in his/her name and the one issued during his/her minority would no more be in force – In absence of domicile certificate in favour of petitioner, no mistake committed by respondents in rejecting her candidature – Petition dismissed: *Tripti Choudhary (Ku.) Vs. State of M.P., I.L.R. (2020) M.P. *8*

– Malafides/"Malice in Fact" & "Malice in Law" – Pleadings – Held – Whenever allegations as to malafides is levelled, sufficient particulars and cogent materials making out prima facie case must be pleaded – Vague allegations and bald assertion is not enough – Petitioner could not point out the necessary ingredients which can establish "Malice in Fact" or "Malice in Law": *Virendra Jatav Vs. State of M.P., I.L.R. (2020) M.P. 2104*

– Qualification – Petitioner is eligible for the post of Registration Clerk as per rules, she cannot be deprived on the basis of advertisement – Advertisement does not have any statutory force – Whether or not petitioner has challenged the advertisement, her right as per the rules cannot be taken away – Rejection order set

aside – Petitioner eligible for the post of Registration Clerk – Petition allowed: *Divya Goyal Vs. State of M.P., I.L.R. (2016) M.P. 1626*

– Police Services – Criminal Case Against Candidate – Held – Criminal case registered u/S 307, 452, 148 & 149 IPC against petitioner containing specific allegations against him in FIR & statements u/S 161 Cr.P.C., duly corroborated by medical evidence – Acquittal of petitioner recorded because of witnesses turning hostile – Not a clean/honourable acquittal – Respondents rightly rejected the candidature – Petition dismissed: *Anoop Singh Thakur Vs. State of M.P., I.L.R. (2020) M.P. *3*

– Post of Constable – 'Suitability' & 'Eligibility' – – Judicial Review – Petitioner though selected was declared unsuitable – Held – Although petitioner acquitted for charge u/S 376 IPC, it does not give him any right to be appointed even if he is selected – Employer carry the discretion to examine "suitability" considering nature of job, duties, department, status of post, nature of accusation and his acquittal etc – Ultimate decision which is an opinion of employer is beyond the scope of Judicial review – "Eligibility is subjected to judicial review but "suitability" is not – Petitioner failed to establish any manifest, procedural impropriety in decision making process – No malafide established – No breach of any circular/Rules – Petition dismissed: *Virendra Jatav Vs. State of M.P., I.L.R. (2020) M.P. 2104*

– Suitability – Parameters – Held – For judging 'suitability', no strict parameters can be reduced in writing with accuracy and precision – It varies from post to post and from department to department – A candidate after acquittal, in one department which is only doing ministerial job may be treated as 'suitable' whereas for another department/post, considering the nature of job may be treated as 'unsuitable': *Virendra Jatav Vs. State of M.P., I.L.R. (2020) M.P. 2104*

– Selection Process – Alteration of Requirement for Particular District – Held – When the scheme applicable to entire state is made under a common guideline, the alteration of requirement by prescribing additional criteria only in respect of one district without such authority to do will not be sustainable: *Nitesh Kumar Pandey Vs. State of M.P., I.L.R. (2020) M.P. 1058 (SC)*

– Alteration of Requirement – Held – Additional criteria introduced after selection process has commenced – Such additional requirement not indicated in guidelines, issued for the entire state – High Court rightly concluded that alteration of requirement after commencement of selection process is not justified – Petition dismissed: *Nitesh Kumar Pandey Vs. State of M.P., I.L.R. (2020) M.P. 1058 (SC)*

– Approbate and Reprobate – Held – Although it is well settled that a person who acceded to a position and participated in the process cannot be permitted

to approbate and reprobate but in instant case, revised time schedule issued by Collector is a schedule prescribed pursuant to recruitment process as provided in guidelines – Mere indication of date of computer efficiency test in time schedule and participation therein cannot be considered as if candidate has acceded to the same so as to estop such candidate from challenging action of respondent – Present case is not a case of approbate and reprobate: *Nitesh Kumar Pandey Vs. State of M.P., I.L.R. (2020) M.P. 1058 (SC)*

– Relaxation in the upper age limit for the purposes of recruitment – Police Executive (Non-Gazetted) Service Recruitment Rules, M.P. 1997, Rule 8 – Exercise of powers u/A 226 and 227 of the Constitution of India – The Court cannot give direction to the State to relax the conditions stipulated in the Rules based on executive instructions in the matter of recruitment to posts under the Rules – Writ Petitions dismissed: *Bhupendra Singh Rawat Vs. State of M.P., I.L.R. (2017) M.P. *47*

– Honourable Acquittal & Suitability of Candidate – Held – In one case, petitioner was acquitted on basis of compromise and in the other, on basis of witness turning hostile – Although petitioner has not obtained honourable acquittal, but respondents failed to consider his suitability on post of Assistant Grade III in Excise Department: *Jitendra Kumar Gupta Vs. State of M.P., I.L.R. (2020) M.P. *26*

37. Regularization

– Casual Employee – Appellants casual employees in Income Tax Department since 1993-94 – In 2004, temporary status granted to similarly situated employees – In view of the Apex Court judgment in Uma Devi case, several recommendations with regard to regularization of appellants were made by the department, however services of appellants not regularized – Claim of appellants rejected though they had served continuously for more than 10 years – Held – As per the circulars and regularization of similarly placed employees at other places and looking into the several recommendations, services of appellants ought to have been regularized in 2006 – Discriminatory treatment given to appellants – Respondents directed to regularize the appellants w.e.f. July 2006 alongwith consequential benefits – Appeal allowed: *Ravi Verma Vs. Union of India, I.L.R. (2018) M.P. 1339 (SC)*

– Entitlement – Petition for regularization on the post of diploma holder Sub-Engineer as per recommendation of screening committee with consequential benefits – Petitioner initially appointed on 27.05.1985 on the post of Sub-Engineer – Petitioner's employment terminated twice on 1.4.1986 and 22.1.2008 – Both times petitioner reinstated in service with 50% back wages with continuity of service – Defence by Respondents – Petitioner's initial appointment was not made by the Managing Director therefore not entitled for regularization – Held – As the petitioner

has worked for 27 years, so at this stage denial of claim of regularization on the ground that his initial appointment was not by the Managing Director is wholly unjustified, irrational and perverse – Respondents directed to regularize the service of the petitioner and to extend the service benefit accruing therefrom – Petition allowed: *Virendra Singh Vs. M.P. Laghu Udhyog Nigam Ltd., Bhopal, I.L.R. (2016) M.P. 2687*

– Entitlement – Irregular appointment can be regularized – But illegal appointment can not be: *Geeta Rani Gupta (Dr.) Vs. State of M.P., I.L.R. (2016) M.P. 2148 (FB)*

– Entitlement – Petitioner appointed on contractual basis for fixed tenure – In advertisement fixed tenure contract appointment mentioned – Held – No right of regularization or extension of period of contract after completion of contract period: *Pawan Bharadwaj Vs. State of M.P., I.L.R. (2016) M.P. 2486*

– Scheme of State Government – Held – Petitioners appointed on daily wages as peon, salesman etc in country/foreign liquor shops run by excise department – Services terminated after 4-5 yrs. on account of subsequent change in policy to auction such shops – Petitioners not entitled to regularization/absorption in government services as they do not fulfill requisite conditions under the scheme framed by State on basis of Apex Court judgment in Umadevi's case – Clause 5.1 of Scheme requires minimum 10 yrs. service – None of petitioners has completed 10 yrs. of service – Impugned order rightly passed – Petition dismissed: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 2756*

– Health Services Recruitment Rules, M.P., 1967, Rule 6 – Regularization of Adhoc Appointment Rules, M.P., 1986, Rule 5 – Unani Chikitsa Adhikari – Adhoc Appointment – Benefit of Higher Time Pay Scale – Seniority/Count of Service – Criteria – Held – Adhoc appointment in 1984 under rules of 1967 and regularization in 1987 under Rules of 1986 – Held – Benefits of 1st and 2nd higher time pay scale granted considering tenure of service from date of initial appointment (adhoc appointment) but at the time of grant of 3rd higher time pay scale, regarding seniority, tenure was counted from date of regularization – Respondents cannot do so when petitioner appointed on a vacant post and as per rules – Petitioner's appointment cannot be termed as "de hors" the recruitment rules – Seniority of petitioner has to be reckoned from date of initial appointment – Petition allowed: *Saiyad Ghazanafar Ishtiaque (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 2142*

38. Repatriation

– Held – It is always the prerogative of borrowing department to retain service of person on deputation and at any point of time they can be repatriated to the

parent department – Since service of petitioner was not found satisfactory, he was repatriated to parent department – Repatriation order is neither punitive nor casting any stigma on petitioner because he has already been earlier punished for irregularities: *Devendra Kumar Soni Vs. State of M.P., I.L.R. (2020) M.P. 2799*

39. Reservation for Physically Handicapped

– Held – Respondents are under an obligation to reserve 3% posts of the total vacancies for persons with disabilities with 1% each for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy, in the posts identified for each disability: *Sushil Kanojia Vs. The Oriental Insurance Co. Ltd., I.L.R. (2018) M.P. 426*

40. Retrenchment

– Industrial Disputes Act (14 of 1947) – Section 2(k)/10/25-B(2)(a)(ii)/25-F – Retrenchment – Reference – Limitation – Period of Work – Burden of Proof – Against retrenchment, workman filed reference before Labour Court whereby instead of reinstatement, lump sum compensation of Rs. 1,00,000 was awarded to each workman – Challenge to – Held – Labour Court despite holding that there was unexplained delay of four years in filing the application by the workman, has allowed the same simply holding that there is no provision of limitation provided to file an application under the Industrial Dispute Act – Labour Court has not dealt with the inordinate delay in its proper perspective – Further held – In respect of the period of service of workman, although an opportunity to file relevant documents was given to the Corporation and later which was not filed by them but still that would not discharge the initial burden casted on the employees to stand on their own legs – Merely filing of affidavit by workman is not sufficient – Labour Court shifting the burden to the Corporation was not justified – Impugned awards are hereby quashed – Petitions allowed: *Municipal Corporation, Jabalpur Vs. The Presiding Officer, Labour Court, Jabalpur, I.L.R. (2018) M.P. 401*

41. Seniority

– Criteria – Held – Court made it clear that law laid down in N.R. Parmar's case would apply only if the recruitment year is the same as the year of vacancy – In present case, though requisition was sent in 2007, the vacancies related to year 2009 and therefore CAT as well as High Court rightly held that direct recruits were not entitled to promotion from year 2007 – Appeal dismissed: *Prabhat Ranjan Singh Vs. R.K. Kushwaha, I.L.R. (2019) M.P. 245 (SC)*

– Determination – Indian Railways Establishment Manual (IREM), Rule 334 – Amendment of Rules – Held – Action of Railways in amending the Rules to

bring them in line with judgment of the CAT by removing "Date of increment in the timescale (DITS)" as determining factor for fixing seniority and introducing the "year of allotment" as criteria for determining seniority cannot be said to be violative or against the order of CAT – Further, there was neither any challenge to Rule 334 of IREM in the original application before CAT nor the Tribunal had gone into this issue – Thus this cannot be dealt in contempt proceedings or appeal – Appeal and Contempt petitions dismissed: *Prabhat Ranjan Singh Vs. R.K. Kushwaha, I.L.R. (2019) M.P. 245 (SC)*

– See – Constitution – Article 226: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

42. Termination/Suspension/Removal

– Contract Appointment – Held – Petitioners are contract appointees and they carry limited rights – Contract can always be terminated as per the terms of Contract – Contract appointment was made in 2016 for a period of one year which has already expired – Notices were issued by the competent Authority – As per the terms of contract, one month notice of termination of contract appointment was issued – No illegality in such termination – No ground for interference – Petitions dismissed: *Maya Kataria Vs. State of M.P., I.L.R. (2017) M.P. *142*

– Contract Appointment – Held – Appeal filed by petitioner was rejected and he has not questioned/challenged the said order – Original order of Disciplinary Authority merged in the order of Appellate Authority and in absence of any challenge to the same, no interference required: *Brijesh Kumar Patel Vs. State of M.P., I.L.R. (2019) M.P. 2529*

– Contractual appointment – Petitioner in reply to show cause notice admitted that he is not staying in headquarter – Petitioner himself admitted that he had flouted the condition of appointment – The service conditions of contractual employees are governed by the terms of contract – Where on admitted or indisputable facts only one conclusion is possible, the court may not compel the observance of natural justice: *Nirbhay Singh Pal Vs. M.P. Police Housing Corporation, I.L.R. (2016) M.P. 424*

– Contractual Services – Peon – Inquiry – Reasonable Opportunity of Hearing – Show cause notice issued to appellant for alleged misconduct – FIR was also registered for offences u/S 406, 409 and 420 IPC arising out of the same incident which gave rise to alleged misconduct – Subsequently, appellant was acquitted of the criminal charge – Order terminating the appellant was passed which was challenged in the Writ Petition which was dismissed – Challenge to – Held – Mere preliminary inquiry report prepared behind the back of petitioner and reply to the show cause

notice was considered before issuing order of termination – Order was passed without giving reasonable opportunity to appellant to rebut the charges of misconduct by adducing evidence – Impugned order not sustainable in the eye of law being stigmatic and yet not preceded by affording of reasonable opportunity – Order of termination of appellant from service quashed – Employer may proceed against appellant in accordance with law: *Malkhan Singh Malviya Vs. State of M.P., I.L.R. (2018) M.P. 660 (DB)*

– Delay – Held – Petitioners services were terminated 17 years back – Impugned order rejecting petitioner's case was passed on 31.08.2009 and they filed the petitions in 2012 – Inordinate delay in filing petition: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 2756*

– Character Verification – Suppression of Fact – Petty Offence – Petitioner, presently 46 yrs old was initially appointed as daily wager in 1989 and in the year 2015 he was regularized – Subsequently his service was terminated on the ground that he suppressed his criminal antecedents in character verification form, which has rendered him unfit for government employment – Challenge to – Held – Petitioner was charged for offence u/S 147, 148, 294, 323, 506 and 324 IPC in 1999 which was a family dispute and was later compromised in 2000 – He stood acquitted around 15 years back before his verification – Offences are petty in nature and incident took place when he was 28 yrs old - It cannot be said that petitioner was involved in any case of moral turpitude – Discretion exercised is not just and proper and was exercised in a mechanical manner – Impugned order quashed – Petition allowed: *Bhagwan Das Yadav Vs. State of M.P., I.L.R. (2017) M.P. *87*

– Power to Cancel Caste Certificate – Held – Power to cancel caste certificate is vested with the High Level Scrutiny Committee constituted by State Government – Order of cancellation passed by SDO is per se illegal and without authority of law, which is already been set aside – Entire termination proceedings based on the order of SDO – Impugned order quashed – Petitioner liable to be re-instated in service – Petition allowed: *Sultan Singh Vs. Union of India, I.L.R. (2019) M.P. 2248*

– Consequential Benefit – Salary – Appellant, a contractual/temporary employee served more than 11 years before the order of termination – Entitled to 25% of salary as would have otherwise become due if order of termination had not been passed, calculated from date of termination till date: *Malkhan Singh Malviya Vs. State of M.P., I.L.R. (2018) M.P. 660 (DB)*

– Termination & Reinstatement – Reinstatement means restoration of position of employee which he was enjoying at the time of termination – Petitioner

was terminated and was subsequently reinstated vide Court orders – For the purpose of regularization, respondents have not counted the services of petitioner after reinstatement and there was no justification or reason assigned in impugned order for not counting the services from date of termination till reinstatement and upto 10.04.2006 (date mentioned in circular) – Further held – A finally determined issue cannot be subsequently negated relying upon interpretation of law given in subsequent judgment in some other case – Benefit of reinstatement cannot be denied to petitioner – Impugned order set aside – Petitioner shall be treated as eligible regarding consideration for regularization – Petition allowed: *Arvind Kumar Mehra Vs. State of M.P., I.L.R. (2018) M.P. 1663*

– Removal of Employee – College Code, Clause 28 – Procedure – Petitioner, a professor in a private unaided educational institution, was abruptly restrained by respondent institution to put his signature in attendance register and was deprived to perform his lawful duties – Institution neither conducted any disciplinary proceedings nor placed him under suspension – Challenge to – Held – It is admitted fact that service conditions of teachers of even an unaided institution admitted to the privileges of University are governed by College Code – Petitioner can be deprived from his right to perform his duties only as per the procedure laid down in College Code – No material/Order on record to show that any lawful order was passed in respect of petitioner – Action taken by institution/employer against petitioner is disapproved – Respondents directed to permit petitioner to perform his lawful duties forthwith, however Institute will be free to take action against petitioner in accordance with law – Petition allowed: *Pushkar Gupta (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. *99*

– Suspension – Right of Posting – Principle – Held – Permitting a delinquent to continue at same place where departmental enquiry is held and misconduct is committed, may not be in interest of administration and public interest – Even if, employee is not suspended, ordinarily it is in interest of fair and transparent enquiry, that he is transferred from that place – It is the exclusive domain of administration to decide as per administrative exigency to post or transfer a particular person at particular place – Direction of Single Judge to post R-4 at same place where he was posted before suspension and transfer, cannot be sustained and is set aside – Appeal partly allowed: *Neerja Shrivastava Vs. State of M.P., I.L.R. (2020) M.P. 1532 (DB)*

– Suspension & Termination – Held – There is no distinction between termination on conviction and suspension during pendency of criminal case – If a person chargesheeted in a case involving moral turpitude then he can always be placed under suspension under relevant rules: *Vijay Manjhi Vs. State of M.P., I.L.R. (2020) M.P. *22*

– Suspension Order – Exercise of Power – Held – Existence of power and exercise of power are two different things – Merely because an authority is competent to pass an order of suspension, it cannot be said that the order is justifiable: *Nahid Jahan (Smt.) Vs. State of M.P., I.L.R. (2017) M.P. 2947*

– Suspension Period – Salary – Held – During the disputed period, petitioner was absent from duty and he has not worked – Petitioner failed to point out any Rule, Regulation or Circular under which he was entitled for full salary for suspension period, though he remained absent from headquarter during suspension – Impugned order does not suffer from any error: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

– Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994 – Section 9(c) and Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 3(c) & 6(6) – Termination of Service – Applicability of Rules – Grounds – Petitioners terminated from service on the ground that they had more than two children, one of whom is born after 26th Jan. 2001 – Challenge to – Held – High Court can adopt statutory Rules framed by State Government for purpose of recruitment of Judicial Services – Rule 3(c) of Rule of 1961 includes Higher Judicial Services as well as Lower Judicial Services – Such clause: Rule 6(6)] of disqualification has a larger public purpose with aim to control population of country, therefore such clause cannot be deemed to be illegal, violating any constitutional provision and would be applicable for determining eligibility of candidate – Further held – But since High Court has not sought this information in terms of 1961 Rules in the prescribed application form, now after selection and appointment, it is not open to High Court to declare a candidate ineligible – Action of High Court cancelling candidature is unreasonable – Termination order set aside – Petitions allowed: *Manoj Kumar Vs. State of M.P., I.L.R. (2018) M.P. 1394 (DB)*

43. Transfer

– Casual Employees – Held – Full Bench of this Court concluded that in absence of an enabling provision/service condition, casual employee cannot be transferred – Transfer is not a condition of service for a casual employee: *Ajit Singh (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1872*

– Competent Authority – Held – As per transfer policy, although the Chief Medical & Health Officer is the administrative head of paramedical staff but so far as authority to transfer/post an employee within district, Collector is also a competent authority to pass the transfer orders: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

– Contractual Employees – Held – Impugned order itself says that a contractual employee cannot be transferred to a place other than the place where he was appointed – His extension of contractual period as a consequence thereof has to be at the same place where he was working – Policy decision regarding extension of contractual employment of existing employees already taken – Impugned order set aside – Petition allowed: *Ajit Singh (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1872*

– Frequent Transfer Orders – Held – Petitioner was transferred earlier on his own request and not because of any administrative exigency – Present transfer orders cannot be considered as frequent transfer orders – Petition dismissed: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

– Frequent Transfers – Held – Employer is the best judge to decide transfer of employee – There was a scuffle between petitioner and other employee – Transfer of petitioner to maintain discipline and normal functioning of department – No fault with transfer orders – Petition dismissed: *Chandragupt Saxena Vs. Bank of Baroda, I.L.R. (2020) M.P. 1882*

– Frequent Transfers – Held – Petitioner, being a Manager, is senior officer of Bank and Apex Court opined that for superior or responsible posts, continued posting at one station is not conducive of good administration – Further, petitioner is neither a Class III nor Class IV employee, thus he do not deserves a protection from frequent transfer which may be given to them in a given fact situation: *Chandragupt Saxena Vs. Bank of Baroda, I.L.R. (2020) M.P. 1882*

– Functionary Powers – Held – Although Officer was transferred but there is nothing on record to show that he was relieved – It cannot be said that merely because applicant was transferred, he had lost all his statutory duties – If a person is transferred but so long he is not relieved from original place of posting, he is not denuded from his powers: *Mahesh Kumar Agarwal Vs. State of M.P., I.L.R. (2019) M.P. 1770*

– Ground – Malafide Exercise of Power – Respondent/Petitioner, an employee of appellant company challenged his transfer order whereby he was transferred from Bhopal to Gwalior – Writ Petition was allowed – Challenge to – Held – Respondent/petitioner could not substantiate his allegation of malafide by any material that authorities have transferred him on account of undue influence of father of his wife – Petitioner has not impleaded any officer of the company in personal capacity alleging malafide – Transfer order has been passed on administrative grounds and there is no flagrant violation of any statutory rules – Appeal allowed – Writ petition dismissed: *M.P. Power Transmission Co. Ltd. Vs. Yogendra Singh Chahar, I.L.R. (2018) M.P. 2099 (DB)*

– Ground – Respondent No. 5/writ petitioner, an employee of Agricultural Marketing Board challenged his transfer from Jabalpur to Bhopal in a petition whereby as an interim order, execution of transfer order was stayed – Appellant, a Deputy Collector who was transferred to Jabalpur challenged the interim order – Held – Looking to provisions of Section 40-A of the Act of 1972 and Rule 110 of Fundamental Rules, appellant could have been transferred to services of Marketing Board – No illegality in transfer order – Further held – In the facts and circumstances, effect of interim order would be of final nature – Appeal allowed and writ petition dismissed: *Prashant Shrivastava Vs. State of M.P., I.L.R. (2018) M.P. 2104 (DB)*

– Grounds – Malafides – Held – Respondent written repeated communications to authorities regarding serious irregularities in bank and levelled specific allegations of corruption – Her reports of irregularities met with a reprisal – She, being a Scale IV officer, was transferred and posted to a branch which was expected to be occupied by Scale I officer – She was victimized – Order of transfer was an act of unfair treatment vitiated by malafides – High Court rightly quashed the transfer order – Appeal dismissed with cost of Rs. 50,000: *Punjab & Sind Bank Vs. Mrs. Durgesh Kuwar, I.L.R. (2020) M.P. 1503 (SC)*

– Grounds & Reasons – Petitioner transferred from post of SDO(P) Patan, Jabalpur to post of DSP AJAK, Jabalpur – Held – The State transfer policy contains exceptional circumstances under which police officer can be transferred by curtailing his normal tenure of two years at one place – Policy having a statutory force and guidelines contained therein have a binding effect – Neither the State Government nor the Police Establishment Board assigned any reasons or disclosed any such exigency transferring the petitioner within his normal tenure – Impugned order in contravention of the directions of Apex Court and transfer policy of State Government, hence not sustainable and quashed – Petition allowed: *S.N. Pathak Vs. State of M.P., I.L.R. (2019) M.P. 865*

– Model Code of Conduct – Effect – Petitioner's transfer order passed on 10.03.2019 and on same date model code of conduct was made applicable – Thus cannot be said that he was transferred after model code of conduct was made applicable: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

– Personal Inconvenience – Scope of Interference – Held – Transfer order can be interfered with if it violates any statutory provision (not policy guidelines), issued by incompetent authority, proved to be malafide or changes the service condition of employee to his detriment – Relevant circular regarding transfer of physically handicapped employees is directory in nature – Personal inconvenience etc. cannot be a ground to interfere with transfer order: *Chandragupt Saxena Vs. Bank of Baroda, I.L.R. (2020) M.P. 1882*

– Place of Posting – Held – Shifting of petitioner from post of SDO(P), Patan, Jabalpur to DSP AJAK, Jabalpur falls within the definition of 'Transfer' – It cannot be said that it was a mere shifting within a District: *S.N. Pathak Vs. State of M.P., I.L.R. (2019) M.P. 865*

– Principles – Held – Transfer is an exigency of service and employee cannot have a choice of posting – Administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus unless transfer order is established to be malafide or contrary to statutory provisions or has been issued by incompetent authority: *Punjab & Sind Bank Vs. Mrs. Durgesh Kuwar, I.L.R. (2020) M.P. 1503 (SC)*

– Representation – Effect – Held – Mere filing of representation does not give any right to employee to stay on a particular place, even after transfer order has been passed – Petitioner has not joined at transferred place and unless and until employee joins his transferred place, no direction can be given to respondents to consider his representation: *Bhagwat Singh Kotiya Vs. State of M.P., I.L.R. (2019) M.P. 1987*

– Woman – Respondent no. 5 was substantially appointed on contract basis as Hostel Superintendent – Being a woman, she was required to be posted in a girls hostel but by mistake she was posted in boys hostel – This mistake was corrected by impugned order – Petitioner was only given the charge of Hostel Superintendent and was never appointed/promoted to the said post – Petitioner has to make room for respondent no. 5 – Petition dismissed: *Pratibha Kushram (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 427*

– Policy – Applicability – Held – Post of DSP/CSP is equivalent to post of SDO(P) and belongs to same cadre, hence policy is applicable in the present case – It is improper to say that policy has no specific reference of the post of SDO(P)/CSP or DSP: *S.N. Pathak Vs. State of M.P., I.L.R. (2019) M.P. 865*

– Municipal Corporation Act, M.P. (23 of 1956) – Sections 58(5) & 58(6) and Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, M.P., 2000, Schedule (I) r/w Rules 3 & 4 – Transfer – Petitioner being Assistant Engineer has been transferred on deputation from Municipal Corporation, Gwalior to Municipal Corporation, Ujjain – Held – State has been given power to transfer any officer or employee from one corporation to another with additional power that in case the tenure of employee at any corporation is more than three years then his transfer would invariably be made by the State Government – Petition deserves to be dismissed: *Pawan Kumar Singhal Vs. State of M.P., I.L.R. (2017) M.P. *10*

– Municipal Service (Executive) Rules, M.P., 1973, Schedule 2, Entry No. 10 – Transfer – Petitioner, CMO Class-C, transferred and posted as Assistant Project Officer – Held – Petitioner is accused for offences under the provisions of Prevention of Corruption Act – Post of CMO is a sensitive post and where cases are still pending against such employees, they shall not be posted on such sensitive post – Despite serious allegations, continuing of petitioner on such sensitive post, will be against public policy and interest: *Shivlal Jhariya Vs. State of M.P., I.L.R. (2019) M.P. 1014*

– Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Section 2(t) – Transfer – Petitioner suffering from mental ailment – It was incumbent upon employer/respondents to have first ascertained as to whether the petitioner suffers from disability as defined in the Act of 1995 or not before transferring the petitioner to the post carrying lower rank – Held – Employer/respondents failed to apply it's mind while issuing the transfer order especially before ascertaining whether the petitioner suffers from disability as defined in Section 2(t) of 1995 Act or not – If the petitioner is suffering from the said disability, then the protections under Chapter VI are available to the petitioner: *Raj Kumar Roniya Vs. Union of India, I.L.R. (2016) M.P. *42*

– Punjab & Sind Bank (Officers) Service Regulations, 1982, (updated upto 31.08.2013) and Circular of Government of India for Transfer of Female Employees in Public Sector Bank, Clause 20 – Transfer – Competent Authority – Held – As per clause 20, transfer order issued after month of June even on administrative exigency except on promotion requires prior approval of Board of Directors which is not done in present case – Transfer order is thus issued by incompetent Authority – Further, bank is obliged to follow the policy guidelines/circular dated 08.08.14 issued by Government of India regarding transfer of female employees of public sector banks and is nor permitted to take shelter of Regulations of 1982 and make transfers at their own whim – Circular provides to accommodate married woman employee at her place where her husband is stationed or as near as possible to that place or vice versa – Order of transfer is against the transfer policy and guidelines and is hereby quashed – Petition allowed: *Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank, I.L.R. (2019) M.P. 379*

44. Upgradation of ACR

– Administrative Order, Clause 10 – Effect – Held – If initial authority erroneously graded the petitioner and Competent Authority decided to upgrade it, benefit of said upgradation should be given to employee from the relevant year/due date – Respondent directed to convene a review DPC based on upgraded entry for

grant of higher pay scale – Clause 10 set aside: *Arvind Jaiswal Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2019) M.P. *69*

45. Voluntary Retirement Scheme

– VRS Scheme – Employees had a right to withdraw the offer during the validity period of the Scheme but not thereafter: *M.P. State Road Transport Corporation Vs. Manoj Kumar, I.L.R. (2017) M.P. 241 (SC)*

SETTLEMENT OF LAND LOCATED WITHIN CANTONMENT AREA UNDER MUNICIPAL COUNCIL NEEMUCH RULES, 2017

– See – Municipalities Act, M.P., 1961, Section 109 & 335: *Mohanlal Garg Vs. State of M.P., I.L.R. (2018) M.P. 1631 (DB)*

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT (14 OF 2013)

– Section 2(n) & 3(2) – "Sexual Harassment" – Compensation – Held – Complainant was subjected to unwelcome sexual harassment at workplace within meaning of Section 2(n) r/w Section 3(2) of the Act and is entitled for compensation – Termination order is stigmatic termination with oblique motive – Petitioner directed to pay Rs. 25 Lacs for pain and suffering, loss of reputation, emotional distress and loss of salary: *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Section 2(n) & 3(2) – "Sexual Harassment" – Scope – Held – Definition u/S 2(n) is inclusive in nature providing any one or more of unwelcome acts or behavior whether directly or indirectly or by implication shall constitute "sexual harassment" – Widening the scope, Section 3(2) contemplates circumstances which may also amount to sexual harassment if it occurs or is present in relation to or connected with any act or behavior of sexual harassment: *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Section 2(n) & 3(2), Penal Code (45 of 1860), Section 499 & 500 and Constitution – Article 226 – Opportunity of Hearing – Held – Petitioners in W.P. No. 22314/2017, since were not noticed by Local Committee and no opportunity of hearing was afforded to participate in enquiry, direction of initiation of criminal prosecution u/S 499 & 500 IPC is not warranted and hence quashed: *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

– Section 4(2)(c) – Constitution of Committee – Independent Member – Held – It was established that a lawyer, who has been appointed as a member of Committee as independent member was the panel lawyer of bank itself – Request of respondent for replacing such member with a truly independent third party, should have been considered – No reason or justification on part of bank not to accede to such request of respondent: *Punjab & Sind Bank Vs. Mrs. Durgesh Kuwar, I.L.R. (2020) M.P. 1503 (SC)*

– Section 26 – Non existence of Internal Complaints Committee – Held – Record shows that there was no Internal Complaints Committee in institution at relevant point of time – Penalty of Rs. 50,000 imposed on the petitioner/hospital: *Global Health Pvt. Ltd. Vs. Local Complaints Committee, District Indore, I.L.R. (2019) M.P. 2482*

SHASKIYA SEVAK (ADHIVARSHIKI-AYU) DWITIYA SANSHODHAN ADHINIYAM, M.P. (28 OF 1998)

– Section 2 – See – Service Law: *State of M.P. Vs. Yugal Kishore Sharma, I.L.R. (2018) M.P. 844 (FB)*

SHASKIYA SEVAK (ADHIVARSHIKI-AYU) SANSHODHAN ADHYADESH, M.P., 2018

– Ordinance No. 4/2018 – See – Warehousing Corporation Staff Regulations, M.P., 1962, Regulation 13: *Amiruddin Akolawala Vs. State of M.P., I.L.R. (2019) M.P. 857*

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 (1 OF 1986) AS AMENDED BY ACT NO. 12 OF 1994

– Section 22 – Bank Guarantee – Bank Guarantee was furnished on behalf of the Contractor to secure the liability due to non fulfillment of the terms and conditions of the work – The bank guarantee is a separate contract between the petitioner and the Bank – The Bank Guarantee ought to have been encashed on demand by the petitioner – Guarantee is not in respect of any loan or advance granted to an industrial company – BIFR and AAIFR has no jurisdiction to question encashment of the Bank guarantee – The Bank is directed to encash the bank guarantee forthwith and also pay the interest – Writ Petition allowed: *Narmada Valley Development Authority Vs. The Appellate Authority for Industrial & Financial Reconstruction, I.L.R. (2016) M.P. 1908 (DB)*

SOCIETY REGISTRIKARAN ADHINIYAM, M.P. (44 OF 1973)

– Sections 3(e), 20, 21 & 25 and Public Trusts Act, M.P. (30 of 1951), Section 36(1)(b) – Exemption – On 16.03.2009, petitioner Samiti got itself registered under the Adhiniyam of 1973 – Later, on 03.07.2010, Registrar, Public Trust ordered for registration of petitioner Samiti as public trust – Challenge to – Held – Despite interim orders passed by this court on 24.06.2010, impugned order was passed on 03.07.2010, therefore for this reason alone, the same is hereby set aside – Further held – In absence of any documentary evidence relating to title, possession or any other right and interest of the society with regard to temple on record and looking to the undisputed fact that temple is constructed on forest land as mutated in revenue records, claim for temple as a private property is not sustainable and is hereby rejected – Further held – For the purpose of attracting provisions of Section 36(1)(b) of Public Trust Act, the public trust or society must be engaged in activities of management of its properties/estate/assets with its functional orientation amenable to regulatory measures as provided under the Adhiniyam of 1973 – In the instant case, there is no document produced on record to claim that said society is administered under the provisions of the Adhiniyam of 1973 – Contention of petitioner that society is immune from the applicability of Trust Act, u/S 36(1)(b) cannot be accepted and is hereby rejected – Public Trust Act is applicable in the present case – Registrar public Trust is directed to initiate the proceedings – Petition partly allowed: *Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/Shitla Mata Kalyan Samiti Vs. State of M.P., I.L.R. (2017) M.P. 1078*

SPECIAL COURTS ACT, M.P., 2011 (8 OF 2012)

– Section 9(3) & 17 – See – Limitation Act, 1963, Sections 3 & 29(2): *State of M.P. Vs. Radheshyam, I.L.R. (2016) M.P. 1171 (DB)*

– Section 11 and Special Courts Rules, M.P., 2012, Rule 10(2) & (3) – Confiscation Proceedings – Submission of Reply – Period of Limitation – Held – Confiscation proceedings are summary in nature where no evidence is required to be taken, thus there is no such trial but barely procedure is needed to be adopted, thus Section 11 of Act is not applicable to confiscation proceedings – Reply was not filed by appellant for two years after service of notice – Authorised Officer rightly denied filing of reply after stipulated period of 45 days, the provision being mandatory in nature and further there is no applicability of Limitation Act – No illegality in denying opportunity to file reply – Appeal dismissed: *Kailash Vs. State of M.P. Through SPE, Lokayukt, Ujjain, I.L.R. (2019) M.P. 911*

SPECIAL COURTS RULES, M.P., 2012

– Rule 10(2) & (3) – See – Special Courts Act, M.P. 2011, Section 11: *Kailash Vs. State of M.P. Through SPE, Lokayukt, Ujjain, I.L.R. (2019) M.P. 911*

SPECIAL ECONOMIC ZONES ACT (28 OF 2005)

– Section 30(3) – "Bill of Export" – Held – "Bill of Export" is mandatory requirement and no claim can be accepted in absence of proper authorization – "Aayat Niryat Form" provides for submission of proofs by furnishing "Bill of Export" – For purpose of exemption from payment of duty, petitioners were required to submit proof of export to SEZ unit – Statutory provisions of furnishing "Bill of Export" not complied with – Further, SEZ unit, which is a necessary party is not impleaded as respondent, who could verify receipt of goods – Petitioner not entitled for any relief – Petition dismissed: *MPD Industries Pvt. Ltd. (M/s) Vs. Union of India, I.L.R. (2020) M.P. 905 (DB)*

SPECIAL POLICE ESTABLISHMENT ACT, M.P. (17 OF 1947)

– Section 3 – See – Penal Code, 1860, Section 409, 420, 467, 468, 471, 120-B: *Manish Kumar Thakur Vs. State of M.P., I.L.R. (2018) M.P. 235 (DB)*

– Section 3 & 5-A – See – Prevention of Corruption Act, 1988, Section 17: *Rajani Dabar (Smt.) (Dr.) Vs. State of M.P., I.L.R. (2018) M.P. 253 (DB)*

SPECIFIC RELIEF ACT (47 OF 1963)

– Section 5 & 39 and Municipal Corporation Act, M.P. (23 of 1956), Section 80 – Civil suit for mandatory injunction for recovery of possession under statutory lease – Whether a suit for mandatory injunction seeking delivery of possession under Section 39 of the 1963 Act is maintainable in view of the fact that relief of recovery of possession ought to have been obtained u/s 5 of the 1963 Act – Held – Court has power to grant a decree of mandatory injunction of possession for discharge of statutory liability and it is not necessary that relief of recovery of possession to be obtained u/s 5 of the Act of 1963 – Suit for mandatory injunction is maintainable: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Section 14 – Restoration of Contract – Held – In view of the clause of termination provided in the agreement, Oil Corporation has every right to terminate the contract and once the contract is terminated then relief of restoration of contract cannot be granted as the same is accountable to the expressed provision of Section

14 of the Act of 1963: *Indian Oil Corporation Ltd. Vs. M/s. Govind Saraf Kisan Seva Kendra, I.L.R. (2017) M.P. 1336 (DB)*

– Section 16 – Oral Agreement – Burden of Proof – Held – In absence of any supportive documentary evidence, any cogent proof or any clinching evidence of agreement and receipt of money by defendants, trial Court relied on oral testimony of witnesses and passed the judgment and decree which is not at all justified – Supreme Court has concluded that in such matters, heavy burden lies upon plaintiff to prove the terms and conditions of oral agreement – Impugned judgment and decree passed by Courts below are set aside – Appeal allowed: *Rekha (Smt.) Vs. Kanhaiyalal, I.L.R. (2018) M.P. 2444*

– Section 16(c) – Readiness and Willingness – Held – In the instant case, evidence with regard to readiness and willingness was never challenged by appellant by cross examining plaintiff therefore it was not necessary for plaintiff to prove anything more in this regard – Plaintiff has proved his readiness and willingness to perform his part of contract: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Section 16(c) & 20 – Conditional Agreement – Held – Condition in agreement regarding demarcation of land by seller and then sale deed be executed, is not mandatory because even at that time, when sale deed was got executed by Court in plaintiff's favour, he did not perform his part of contract nor got the land demarcated: *T.P.G. Pillay Vs. Mohd. Jamir Khan, I.L.R. (2020) M.P. 1174*

– Section 16(c) & 20 – Readiness & Willingness – Burden of Proof – Held – For decree of specific performance, plaintiff has to proves his readiness to perform his part of contract – Except oral submission, no evidence(income tax return/bank statement) substantiating his readiness and willingness and his financial capacity to pay remaining sale consideration – Even no reference of readiness in notice sent by him – Even full remaining sale consideration not deposited in CCD by Plaintiff – He has to discharge his obligation to deposit remaining amount even though, has not been directed by Court – Plaintiff only entitled for refund of amount and not for a decree of specific performance – Judgment and decree set aside – Appeal allowed: *T.P.G. Pillay Vs. Mohd. Jamir Khan, I.L.R. (2020) M.P. 1174*

– Section 16(c) & 20 – Readiness & Willingness – Held – Defendant admitted the execution of agreement to sell – Plaintiffs, by their conduct, failed to prove their readiness and willingness to perform their part of contract – Discretionary decree of specific performance of contract in favour of plaintiffs denied – However, since payment of Rs. 1,00,000/- by plaintiffs to defendant is not disputed, instead of decree for specific performance of contract, plaintiffs entitled for refund of the advance amount paid by them, with hike in price – Appeal disposed: *Ramwati (Smt.) Vs. Premnarayan, I.L.R. (2020) M.P. *12*

– Sections 16(c), 20, 21, 22 & 23 and Constitution – Article 136 – Scope & Grounds – Suit for Specific Performance of Contract – Held – Concurrent findings of fact that plaintiff/appellant failed to prove his readiness and willingness to perform his part of contract, is binding on this Court – It being essentially a question of fact, re-appreciation of entire evidence in appeal under Article 136 of Constitution is not warranted – Further, findings recorded are neither against pleadings nor evidence and nor any principle of law – Grant of relief of specific performance is a discretionary and equitable relief – Appellant failed to point out any material perversity or illegality in the findings – Appeal dismissed: *Kamal Kumar Vs. Premlata Joshi, I.L.R. (2019) M.P. 707 (SC)*

– Section 16(1)(c) & 20 and Civil Procedure Code (5 of 1908), Form 17, Appendix A – Readiness and Willingness – Belated Suit – Inadequate Consideration – Appeal against the judgment of trial Court dismissing the suit for specific performance filed by appellant/plaintiff – Held – In a suit for specific performance of contract, plaintiff has to plead and prove readiness and willingness to perform his part of contract and if there is no pleading, no evidence can be adduced or can be looked into to prove the case nor any findings can be recorded by trial Court – In the present case, in absence of such pleadings, suit was rightly dismissed as basic requirements of pleadings as provided u/S 16(1)(c) r/w Form 17 Appendix A of CPC was not fulfilled – Further held – Agreement to sale executed in 1993, agreement was disputed by respondent no.2 in 1994, nothing prevented the appellant/plaintiff to approach the trial Court in time – Relief of specific performance is a discretionary and equitable relief and at present cannot be granted keeping in view the conduct of appellant, after a lapse of 24 years – Further held – The property which was agreed to be sold for Rs. 8.5 lacs in 1986-88 was valued in agreement of 1993 as of Rs. 1.05 lacs, this raises a serious doubt regarding the said agreement as highly inadequate consideration was mentioned in agreement – Trial Court rightly dismissed the suit – Appeal dismissed: *Shubh Laxmi Grih Nirman Sahakari Sanstha Maryadit, Indore Vs. Suresh @ Gopal, I.L.R. (2018) M.P. *37*

– Section 19 – See – Civil Procedure Code, 1908, Order 1 Rule 10: *Mangai Bai (Smt.) Vs. Smt. Hansi Bai @ Hasu Bai, I.L.R. (2018) M.P. 1504*

– Section 22 – See – Limitation Act, 1963, Schedule I, Article 54: *Madina Begum Vs. Shiv Murti Prasad Pandey, I.L.R. (2017) M.P. 507 (SC)*

– Section 28 and Civil Procedure Code (5 of 1908), Section 148 & 151 – Extension of Time to Deposit Decreetal Amount – Power of Court – Decree of specific performance of contract in favour of Plaintiff/respondents – In execution proceedings, plaintiff filed an application u/S 148 C.P.C. for extension of time to deposit the decreetal amount, which was allowed – Challenge to – Held – The Apex

Court has held that the restriction of 30 days provided u/S 148 C.P.C. would not take away the right of Court to extend the time in exercise of power u/S 115 C.P.C. – Court is having ample power to extend the period to deposit the decreetal amount – Further, u/S 28 of the Act of 1963, decree of specific performance of contract is in the nature of preliminary decree, and after passing of decree Court does not become functus officio and Court after considering the circumstances including the conduct of parties can extend the time for compliance of decree – Court rightly exercised the discretion – Revision dismissed: *Gitabai Vs. Sunil Kumar, I.L.R. (2018) M.P. 1235*

– Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Execution of Decree – Limitation – Held – Judgment and decree for specific performance of contract passed against appellant on 11.08.2004 – Application for execution filed by plaintiff/respondent on 03.12.2004 (within 4 months) – Merely because relatives of appellants succeeded in keeping the execution application pending by instituting various litigation on one ground or the other and obtaining interim orders, it cannot be said that application for execution was barred by limitation – Executing Court rightly rejected the objections – Appeal dismissed: *Harjeet Vs. Abhay Kumar, I.L.R. (2019) M.P. 594*

– Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Objections – Non Deposit of Consideration Amount – Held – Once there was a legal impediment before respondents and they were not entitled to get the decree executed in form of execution of sale deed, then the contention of appellant that although respondents were not entitled for execution of sale deed in view of interim orders passed by different courts at different stages but still respondents were under obligation to deposit consideration amount, cannot be accepted – Contract has not rescinded u/S 28 of the Act of 1963: *Harjeet Vs. Abhay Kumar, I.L.R. (2019) M.P. 594*

– Section 28, Civil Procedure Code (5 of 1908), Section 148 & 151 and Evidence Act (1 of 1872), Section 115 – Execution of Decree – Limitation – Doctrine of Estoppel – Held – In the present case, against the compliance of the decree, defendant refuse to accept the decreetal amount from plaintiff and in such circumstances now defendant is stopped from assailing the mode of deposit of amount especially when at the time of submission of FDR by plaintiff, they never raised any objection – Defendants have no right to pray for rescindment of contract on the point of limitation: *Gitabai Vs. Sunil Kumar, I.L.R. (2018) M.P. 1235*

– Section 34 – Agreement – Ingredients – Validity – Held – Plaintiff described himself by different names – Detail of sale deeds have been left blank and even area, dimension and location of individual survey nos. not mentioned in agreement – Agreement not signed by R-4 & R-5 and no record to show that agreement was with their consent and knowledge – No map attached with agreement – Agreement was

vague, uncertain and thus not enforceable – Appeal dismissed: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 34 – Agreement – Readiness & Willingness – Held – Payments made by plaintiff are not as per the schedule of payment agreed by the parties – Default in schedule of payment shall certainly attract the clause of automatic termination of agreement: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 34 – Agreement – Terms and Conditions – Burden of Proof – Held – The burden that the stipulations and terms of contract and mind of parties ad idem is always on plaintiff and if such burden is not discharged and stipulation and terms are uncertain, and parties are not ad idem, there can be no specific performance, for there was no contract at all: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 34 – Consequential Relief – Held – In absence of consequential relief of declaration of election of Respondent-4 as void, election petition is hit/barred by Section 34 of the Act of 1963: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Section 34 – Necessary elements – Entitlement of "legal right" or "legal character" in relation to a property may be a subject matter of suit – Thus, the "entitlement", "legal character" and "legal right" are the necessary elements for seeking a declaration of status or right: *Jai Vilas Parisar Vs. Alok Kumar Hardatt, I.L.R. (2016) M.P. 1487*

– Section 34 – See – Civil Procedure Code, 1908, Order 14 Rule 5: *Salim Khan @ Pappu Khan Vs. Shahjad Khan, I.L.R. (2020) M.P. 63*

– Section 34 – See – Representation of the People Act, 1951, Section 81 & 126: *Vishnu Kant Sharma Vs. Chief Election Commissioner, I.L.R. (2020) M.P. 2130*

– Section 34 and Benami Transactions (Prohibition) Act (45 of 1988), Section 2(a) & 4 – Agreement – Bonafide Purchaser – Held – Plaintiff was not a bonafide purchaser with no financial capacity – He also failed to prove genuineness of transactions for preparation of pay orders and bank drafts from accounts of other persons – None of such other persons were got examined in Court – No agreement in writing between plaintiff and such other persons/companies – Plaintiff acted as a front man to purchase suit land for benefit/gain of companies – Entire details of flow of money/transactions are not genuine and tantamount to benami transaction prohibited u/S 2(a) of Act of 1988: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 34 and Evidence Act (1 of 1872), Section 91 – Agreement – Contents – Amendment – Practice & Procedure – Held – Terms of entire agreement has to be read as whole to ascertain intention of parties and working out its conclusions, so that on fulfillment of requisite conditions, agreement could be enforced under law – Clauses of agreement neither can be supplemented, supplanted or substituted by extensive description in plaint or in oral testimony – No amendment in pleadings can be either permitted or read in conjunction with various clauses of agreement – Section 91 of Evidence Act also prohibits proving of contents of document: *Satish Kumar Khandelwal Vs. Rajendra Jain, I.L.R. (2020) M.P. 1389*

– Section 34 and Transfer of Property Act (4 of 1882), Section 55 – Relief of Possession – Suit for specific performance decreed in favour of respondent/plaintiff – Held – Submission of appellants that unless and until relief of possession is prayed, suit for specific performance of contract is not maintainable, is misconceived and cannot be accepted because relief of possession can be treated as implied in the relief of specific performance of contract – When decree of specific performance is passed, defendant shall be called upon to execute the sale deed and in view of Section 55 of the Act of 1882, seller shall be under obligation to hand over possession of the property in question – Further held – Once this court concluded that sale agreement was executed by appellant No.1, now, whether the suit property was already in possession of respondent or not, would not make any difference – Appeal dismissed: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Section 34, Civil Procedure Code (5 of 1908), Section 96 and Registration Act (16 of 1908), Sections 17 & 49 – Specific performance of contract – Suit was dismissed only on the ground that agreement to sell was unregistered document and hence inadmissible in evidence – Held – Document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance – Suit filed by the appellant is decreed and impugned judgment and decree set aside: *Akshay Doogad Vs. State of M.P., I.L.R. (2016) M.P. 217 (DB)*

– Section 34 & 42 – See – Land Revenue Code, M.P., 1959, Section 178: *Karelal Vs. Gyanbai Widow of Keshari Singh, I.L.R. (2018) M.P. 1687*

– Section 37 & 41(j) – Perpetual Injunction – Decree – Held – Even if possession of plaintiff was found proved on the suit land but in absence of any legal right or title, relief of perpetual injunction cannot be granted: *Jagannath Vs. Smt. Sarjoo Bai, I.L.R. (2016) M.P. 3338*

– Section 39 – Civil Suit for mandatory injunction for recovery of possession – Initially lease was executed in the year 1926 for 30 years – Lease expired in the

year 1956 – Lease was not renewed but, appellant continued in possession – Premium was also accepted by the Municipal Corporation – Lease was renewed on 19.12.1989 for 60 years including regularization of lease – Encroachments removed in the year 1999 – Possession taken by the defendant/corporation in the year 1999, while removing encroachers – Demand for re-possession by appellants not considered – Suit filed on 22.04.2003 – Suit is not delayed: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Section 39 – See – Municipal Corporation Act, M.P., 1956, Section 80: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– Section 41 – See – Limitation Act, 1963, Article 54: *Himmatlal Vs. M/s. Rajratan Concept, I.L.R. (2018) M.P. 2035*

– Section 41 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Revision against the dismissal of application filed by Petitioner/defendant under Order 7 Rule 11 of C.P.C. – Suit for Mandatory injunction without claiming specific performance of agreement – Held – A suit for mere negative injunction without claiming specific performance of agreement is not maintainable – When the suit itself is not maintainable, the question of prima facie case does not exist – Application filed by petitioner/defendant under Order 7 Rule 11 is allowed and Civil Suit filed by the respondents/plaintiff is dismissed – Revision allowed: *Ganpat Vs. Ashwani Kumar Singh, I.L.R. (2018) M.P. *6*

STAMP ACT, INDIAN (2 OF 1899)

– Sections 27, 33 & 47-A (as applicable in M.P.) – Deed of Conveyance – Deficit Stamp Duty – Held – In conveyance deed, there is specific mention of incorporating earlier agreements, documents, deeds and resolutions – Clauses of deed apparently shows that it is not only a bald reference whose terms and conditions cannot be deduced but they have been explicitly mentioned – Sub-Registrar was justified in exercising authority u/S 33 of the Act by examining the instrument and ascertaining its chargeability – Appeal allowed: *State of M.P. Vs. SRF Ltd., I.L.R. (2019) M.P. 2218 (DB)*

– Section 27 & 47-A – Undervaluation of Property – Effect – Held – On date of execution of sale deed of the land, a super structure was standing thereon, which was not considered for valuation purpose – As per Section 27 of the Act, it was incumbent upon the vendor and vendee to have disclosed this fact in the instrument of transfer and also pay stamp duty as per valuation – State can recover the deficit stamp duty and the penalty imposed: *State of M.P. Vs. M/s. Godrej G.E. Appliance Ltd., I.L.R. (2019) M.P. 1632 (DB)*

– Section 27 & 47-A – Valuation of Property – Considerations – Held – For determining the stamp duty on a instrument recording sale of property, which is presented for registration, it is the market value of the property and all other facts and circumstances affecting the chargeability of said instrument, on the date of presentation is to be taken into consideration as per Section 27 of the Act of 1899 – Collector has not exceeded his jurisdiction in determining market value of property on date of execution of sale deed – Writ appeal allowed: *State of M.P. Vs. M/s. Godrej G.E. Appliance Ltd., I.L.R. (2019) M.P. 1632 (DB)*

– Section 33 – Deed of Conveyance – Deficit Stamp Duty – Computation – Held – When sale of an entity takes place as a "going concern" then sale of plant, machinery and movable cannot be detached from immovable as has been sought by seller and buyer: *State of M.P. Vs. SRF Ltd., I.L.R. (2019) M.P. 2218 (DB)*

– Section 33 – Examination and Impounding of Instruments – Sale Deed – Sale certificate issued for sale of entire industry including movable and immovable property in total consideration of Rs. 10.12 crores but before its execution a deed of conveyance has been executed for sale of only land in consideration of Rs. 2,85,96,280 – Official Liquidator executed the sale deed much before the issuance of Sale Certificate – In the Schedule appended to sale deed, building structure lying thereon has been mentioned as property sold – Sale Certificate was issued by official liquidator for movable and immovable property both – Respondent liable to pay stamp duty on total consideration of Rs. 10.12 crores – Petition allowed: *State of M.P. Vs. Shri Birani Sons, Indore, I.L.R. (2018) M.P. 1135*

– Section 33 & 47-A (as applicable in M.P.) – Scope & Ingredients – Applicability – Held – Scope of Section 47-A is different from scope of Section 33 – There is no provision u/S 47-A to impound a document, it only deals with determination of market value of any property which is a subject matter of conveyance/instrument whereas Section 33 empowers an authority, that if it appears to him that such document/ instrument is not duly stamped, then to impound the same: *State of M.P. Vs. SRF Ltd., I.L.R. (2019) M.P. 2218 (DB)*

– Section 34 – Defective Power of Attorney – Stamp Duty – Jurisdiction of Court – Held – If defective power of attorney is filed, Court cannot give permission to correct it by filing the signature and consent of recipient of power of attorney – Instrument not duly stamped is inadmissible in evidence – For deficit stamp duty, instrument has to be sent before competent authority for impounding and fine – When document is validated only then it could be acted upon – Impugned order set aside – Petition disposed: *Vinita Shukla (Smt.) Vs. Kamta Prasad, I.L.R. (2020) M.P. 447*

– Section 40 – Penalty – Aims & Objects – Held – Purpose of penalty generally is a deterrence and not retribution – Public authority should exercise the discretion reasonably and not in oppressive manner: *Trustees of H.C. Dhanda Trust Vs. State of M.P., I.L.R. (2020) M.P. 2016 (SC)*

– Section 40(1)(b) – Deficit Stamp Duty – Penalty – Quantum – Held – Imposition of extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on mere factum of evasion of duty – It is not the case of Collector that conduct of appellant was dishonest or contumacious – This Court earlier concluded that it is only in the extreme situation, penalty needs to be imposed to the extent of ten times – Penalty reduced to five times – Appeals partly allowed: *Trustees of H.C. Dhanda Trust Vs. State of M.P., I.L.R. (2020) M.P. 2016 (SC)*

– Section 47 r/w Sections 33, 35 & 38 – Impounding of the Arbitral Award as the same is insufficiently stamped – Held – Merely by appointment of an Arbitrator by the Supreme Court u/S 11(6) of 1996 Act, on 25.02.2002, it can not be said that the dispute stood referred to the Arbitrator – In the instant case, on the day when the Supreme Court appointed Arbitrator for the petitioners, the Arbitral Tribunal was not appointed in terms of arbitration agreement – If the decree is not duly stamped, it has to be impounded – Impugned order suffers from an error apparent on the face of the record – Same is quashed – Executing Court is directed to examine the question as to whether the award dated 23.09.2004 bears adequate stamp duty or not and to proceed accordingly: *M.P. Power Generation Co. Pvt. Ltd. Vs. Ansaldo Energia SPS, I.L.R. (2016) M.P. 3022*

– Section 47 (A) – Instruments under valued – How to be dealt with – Admittedly the documents were submitted after the cut-off date for registration – Therefore, respondent No. 1 is not entitled for the benefit of the relaxation as per circular dated 12.05.2006 – The State Government is entitled to get the stamp duty because the instrument was presented after cut-off date – Respondent No. 1 to pay the deficit stamp duty: *State of M.P. Vs. M/s. Saifi Timber Mart, I.L.R. (2016) M.P. 2446 (DB)*

– Section 47 A – See – Preparation & Revision of Market Value Guidelines Rules, M.P., 2000, Rule 3(2)(b): *Ramprasad Vs. Central Valuation Board, I.L.R. (2016) M.P. 2218 (DB)*

– Section 47-A – Stamp Duty – Calculation – Relevant Date of Instrument – Land allotted to petitioner by a registered society in 1984 – Instrument for registration was executed in 2009 – Collector of Stamps held that stamp duty will be calculated on the basis of market value which will be determined from date of execution of instrument i.e 2009 – Appeal filed by petitioner before Commissioner and second

appeal filed before the Board of Revenue were dismissed – Challenge to – Held – Date of execution of the instrument is the relevant date for estimating the market value of property i.e the price, such property would fetch if sold in open market on that date – Further held – As per government circular, if after allotment, construction has been raised by allottee, then stamp duty is only payable on the value of plot – Sale deed clearly mentions that allottee has constructed house on the plot, but this plea of petitioner has been rejected without any justifiable reason and without holding any inquiry – Orders of Collector of Stamps, Commissioner and Board of Revenue are set aside – Matter remanded back to Collector of Stamps for decision afresh after giving opportunity of hearing and conducting inquiry, if required – Petition disposed of: *Gyanprakash Vs. State of M.P., I.L.R. (2018) M.P. 1145*

– Schedule 1-A, Article 5(3)(i) – Stamp Duty – Calculation – Question of Possession – Held – Although agreement to sell was termed as "without possession" but clause of agreement shows that there was a clear intention of parties to terminate landlord-tenant relationship – Since possession of Respondent-1 (tenant) was altered from that of tenant to that of transferee under contract, agreement to sell would be a conveyance and is chargeable under Article 5(3)(i) of Schedule 1-A – Document was not sufficiently stamped – Impugned order set aside – Petition allowed: *Rajendra Kumar Agrawal Vs. Anil Kumar, I.L.R. (2020) M.P. 2462*

– Schedule 1A and Section 33 & 35 – Carbon Copy Document – Impounding of – Permissibility – Held – This Court has earlier concluded that carbon copy prepared alongwith original is also an original copy – Petitioners themselves took a stand in the earlier writ petition that document is a partition deed and only it is required to be stamped – Trial Court rightly send the document to Collector of Stamps for impounding – Petition dismissed: *Nathulal (Deceased) Through L.R. Kailashchandra Vs. Ramesh, I.L.R. (2019) M.P. 2015*

– Schedule 1A and Section 33 & 35 – Impounding of Document – Duty of Court – Held – It is well settled law that once any deed or document comes before Court and if it finds that it is not properly stamped and stamp duty is liable to be paid, then it is duty of Court to send the document to Collector of Stamps: *Nathulal (Deceased) Through L.R. Kailashchandra Vs. Ramesh, I.L.R. (2019) M.P. 2015*

STANDARDS OF WEIGHTS AND MEASURES (ENFORCEMENT) ACT (54 OF 1985)

– Section 3(f) & 5 and Weight and Measures (Class III) (Non-Ministerial) Service Recruitment Rules (M.P) 1990, Rules 6 & 8 – Appointment of Inspectors – Qualifications – State Government vide executive instructions declared certain junior persons as Inspectors who did possess the requisite qualification – Held – A person

who does not have the qualification as prescribed in the Act of 1985 and Rules of 1990, can never be declared as Inspector in the manner and method, it is done by State Government – Impugned order quashed – Petition allowed.: *P.K. Tembhare Vs. State of M.P., I.L.R. (2018) M.P. *92*

STATE BANK OF INDORE (EMPLOYEES') PENSION REGULATION, 1955

– Regulation 33 – Entitlement of Pension – Under Regulation 33, workman would not be entitled to pension if an order of punishment of dismissal has been substituted by compulsory retirement unless workman is entitled to pension on superannuation – Order of punishment of compulsory retirement may not entitle the workman for the benefit of pension but the intention of the Tribunal is categorical so as to entitle him to pensionary benefits – The issue, that pension cannot be paid, was neither raised before the Tribunal nor examined at the time of rendering award by Tribunal – Matter remitted back to Tribunal on the point of punishment so as to make the workman eligible for pensionary benefits: *State Bank of India Vs. Vishwas Sharma, I.L.R. (2017) M.P. 877 (DB)*

STATE EMBLEM OF INDIA (PROHIBITION OF IMPROPER USE) ACT (50 OF 2005)

– Section 3 – Applicability – Held – Breach of this provision would occur only when the emblem is used in order to create an impression that it relates to Government or it is an official document of Central Government – It applies in case where a person actually would use such emblem in his car or uniform or any other place, giving impression that the car, uniform etc relates to government and person shows as if he is authorized to use such property – In instant case, breach of provision not established: *Ekta Kapoor Vs. State of M.P., I.L.R. (2020) M.P. 2837*

STATE FINANCIAL CORPORATION ACT (63 OF 1951)

– Section 29 – Auction of Pledged Property – Procedure – Held – There is no statutory provision, rule, regulation or established practice that before finalizing last highest bid, owner of property be given opportunity to deposit the said amount: *Trilochan Singh Chawla Vs. M.P. State Financial Corp., I.L.R. (2019) M.P. 2036*

– Section 29 – Rights of Corporation – Auction of Pledged Property – Procedure – Held – Notice inviting tender was published thrice – Proper correspondence/ negotiations were made, minutes of every meeting were recorded and then sale was finalized after calling fresh valuation report of property – Appellant

failed to establish any illegal nexus between purchaser and officers of corporation – Procedure conducted by respondents for auction and sale of pledged property was fair and reasonable and was not malicious or contrary to law – Suit rightly dismissed – First appeal dismissed: *Trilochan Singh Chawla Vs. M.P. State Financial Corp., I.L.R. (2019) M.P. 2036*

STATE MINING CORPORATION LIMITED, M.P. (SERVICE AND CONDUCT RULE) RULES

– Clause 54(1) – Suspension order placing the petitioners under suspension as they have demanded bribe – Challenged on the ground that the provision under clause 54 is only an enabling provision which provides that an employee can be placed under suspension when criminal charge is pending against him – Held – Petitioners were caught red-handed while accepting the bribe – Reasons for suspension are spelled out in the order itself – Thus "charge is pending" must be related to accusation and not related to "charge framed" in a criminal case – There is no legal error in placing the petitioners under suspension – Petition dismissed: *Rajeev Lochan Sharma Vs. State of M.P., I.L.R. (2017) M.P. *26*

SUCCESSION ACT, INDIAN (39 OF 1925)

– Section 57(b) & 213(1) – Admissibility of Will/Codicil in evidence in Trial Court without obtaining the letter of administration/probate – Held – Trial Court is competent to consider the "Wills" in question in respect of the properties for which no probate or letter of administration is required: *Rupinder Singh Anand Vs. Smt. Gajinder Pal Kaur Anand, I.L.R. (2016) M.P. 1685*

– Section 63 – See – Evidence Act, 1872, Section 3: *Latoreram Vs. Kunji Singh, I.L.R. (2016) M.P. 2313*

– Section 63 (c) – See – Evidence Act, 1872, Section 68: *Visnushankar (Since dead) Vs. Girdharilal, I.L.R. (2018) M.P. 1174*

– Section 63(c) – Will – Burden of Proof – Held – It is for the propounder (defendant) of Will to remove all suspicious circumstances – No attesting witnesses were examined by defendant /respondents – Further, evidence of the scribe of the Will cannot be equated with that of attesting witnesses – Courts below wrongly shifted the burden of proof on Plaintiff that the Will was not forged or concocted – Respondents failed to prove the Will as per Section 63(c) – Appeal allowed: *Rajaram through L.Rs. Smt. Bhagwati Bai Vs. Laxman, I.L.R. (2020) M.P. 706*

– Section 63(c) – Will – Proof – Held – Where the signature/thumb impression of testator of Will are not admitted, then Will is required to be strictly

proved in accordance with provisions of Section 63(c) of the Act of 1925: *Rajaram through L.Rs. Smt. Bhagwati Bai Vs. Laxman, I.L.R. (2020) M.P. 706*

– Section 127 – See – Hindu Succession Act, 1956, Section 22: *Kailashchandra (Dr.) Vs. Damodar (Deceased) Through LRs., I.L.R. (2019) M.P. 2327*

– Section 214 – See – Land Acquisition Act, 1894, Section 18: *Lalji Vs. State of M.P., I.L.R. (2018) M.P. *104*

– Section 276 – See – Civil Procedure Code, 1908, Order 14 Rule 5 & Order 8 Rule 1(A)(3): *Pratibha Mohta Vs. Sanjay Baori, I.L.R. (2016) M.P. *13*

– Section 295 and Civil Procedure Code (5 of 1908), Order 4 Rule 1, 2 & 3 – Effect – Held – Trial Court converted the proceedings of probate application and registered it as Civil Suit – There is no necessity to apply Order 4 Rule 1, 2 and 3 C.P.C., indeed provisions of C.P.C. can be made applicable as nearly as possible from the stage, proceedings is converted into civil suit – It cannot be said that proceedings should have been filed as a regular civil suit since inception – Registration of probate proceedings as civil suit will not make it a civil suit in its strict sense – No interference warranted – Petition dismissed: *Sarla Jaiswal Vs. Jaikishore Jaiswal, I.L.R. (2018) M.P. *109*

– Section 372 and Hindu Marriage Act (25 of 1955), Sections 5, 11 & 16 – Second Marriage – Presumption of Marriage – Entitlement of Wife and Children – Deceased was earlier married to Respondent and had three children – During the subsistence of first marriage, deceased started living with applicant and also had three children from the relationship – Due to such relationship, the first wife was divorced in the year 1977 – After death of husband, both the wives alongwith their children claiming succession certificate in their favour – Held – As the first wife was divorced, she is not entitled for any succession certificate – So far as the second wife is concerned, she started living with the deceased as husband and wife, during the subsistence of first marriage of deceased and therefore the said marriage was void as per section 11 and in contravention as per Section 5 of the Act of 1955 and therefore she is also not entitled for the succession certificate – Further held – Children of both the marriages are legitimate children, so they are entitled for succession certificate – Impugned order modified accordingly – Revision partly allowed: *Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Devi, I.L.R. (2017) M.P. 1211*

SUITS VALUATION ACT (7 OF 1887)

– Section 3 – See – Court Fees Act, 1870, Section 7(vi): *Radhey Shyam Vs. Bhure Singh, I.L.R. (2016) M.P. 2214*

SUPREME COURT JUDGES (SALARY AND CONDITIONS OF SERVICE) ACT (41 OF 1958)

– Section 16B and High Court Judges (Salaries and Conditions of Service) Act, (28 of 1954), Section 17B – Pension/Family Pension – Additional Quantum – Interpretation of word "From" – Held – Interpretation of Section 17B of Act of 1954 shall apply mutatis mutandis to Section 16B of Act of 1958 i.e. the expression "From" in each entry of scale provided u/S 16B will mean "starting point" of "the year" instead of "after" the completion of "the year": *Justice Shambhu Singh (Rtd.) Vs. Union of India, I.L.R. (2020) M.P. 2804 (DB)*

– Section 16B, High Court Judges (Salaries and Conditions of Service) Act, (28 of 1954), Section 17B and Constitution – Article 226 – Scope & Jurisdiction – Held – Relief of general nature sought by petitioner for extension of benefits of Section 16B of Act of 1958 and Section 17B of Act of 1954 to the retired Judges of High Courts and Supreme Court or their respective family pensioner cannot be acceded to – Respondents directed to construe the word "From" as first day of entering minimum age of slab to the petitioners – Petitions allowed to such extent: *Justice Shambhu Singh (Rtd.) Vs. Union of India, I.L.R. (2020) M.P. 2804 (DB)*

SWASHASI CHIKITSA MAHAVIDHYALAYEIN SHEKSHANIK ADARSH SEVA NIYAM, M.P., 2018

– Rule 5.1 – See – Medical Education (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 4 & 13: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

– Rule 5.1 & 7(6) – See – Medical Education (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 4 & 13: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

– Rules 5.1, 7(6) & 9 – See – Medical Education (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 4 & 13: *Bharat Jain (Dr.) Vs. State of M.P., I.L.R. (2020) M.P. 1541*

SWATANTRATA SANGRAM SAINIK SAMMAN NIDHI RULES, M.P., 1972

– Rule 3(6) – Samman Nidhi/Pension – Entitlement – Arrears & Interest – Application seeking "Samman Nidhi"/Pension was rejected in 1993 for want of relevant documents/proof but later, on 28.03.14, same was allowed – Claim of arrears and interest from initial date of rejection was disallowed – Challenge to – Held – Rules

were amended in 1999 and Rule 3(6) was added according to which a person shall be entitled to get Samman Nidhi from date of passing of order – In absence to any challenge to Rules, the same governs the field and have to be complied with – Rejection of 1993 was also never challenged by petitioner – No case of interference – Petition dismissed: *Mohan Singh Thakur Vs. State of M.P., I.L.R. (2017) M.P. 2417*

SWATANTRATA SANGRAM SENANI NIYAM, 1972

– Rule 2 – Freedom Fighters – 'Samman Nidhi'/Pension – Standard of proof of participation in freedom movement – Case of Freedom Fighters has to be examined on the basis of probabilities and not on the touchstone of the test of 'beyond reasonable doubt': *State of M.P. Vs. Ram Sahayak Nagrik, I.L.R. (2016) M.P. 3233 (DB)*

– Rule 2, Explanation No. 3 – 'Samman Nidhi'/Pension – Petitioner – Freedom Fighter – Claim for 'Samman Nidhi' rejected by the Government – Ground – Non-submission of any document or evidence to show involvement in the freedom struggle – Challenge as to – Writ Petition – Grounds – Notified freedom fighter as per Government Gazette – Affidavit of recognized freedom fighter – Petitioner was underground for more than 3 months – Petition allowed – Appeal by State Government – Held – Learned Single Judge has rightly appreciated the documents on record in accordance with law – Appeal dismissed – State to comply with the order passed by the Writ Court forthwith without any delay and pay entire amount with interest @ 7% per annum within a period of 2 months: *State of M.P. Vs. Ram Sahayak Nagrik, I.L.R. (2016) M.P. 3233 (DB)*

SWAYATTA SAHAKARITA ADHINIYAM, M.P., 1999 (2 OF 2000)

– Section 56 & 57 and Civil Procedure Code (5 of 1908), Section 2(2) – Award by Arbitration Council – Execution – Stamp Duty – Held – A decree is passed by Civil Court in a suit on adjudication but Arbitration Council is neither a Court nor its proceedings falls within the meaning of suit – Order/award passed by Arbitration Council is not a decree as defined in Section 2(2) CPC – Section 56(4) of the Act treats the order of Council as decree only for purpose of its execution by Civil Court – Stamp Duty is payable on execution of the said award as per clause 11 of Schedule 1A of the Indian Stamp Act, 1899 (MP amendment) – Impugned order set aside – Petition allowed: *Jehangir D. Mehta Vs. The Real Nayak Sakh Sahkari Maryadit, I.L.R. (2019) M.P. *5*

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TELEGRAPH ACT (13 OF 1885)

– Section 4 – See – Nagar Palika (Installation of Temporary Tower/Structure for Cellular Mobile Phone Service) Rules, M.P., 2012: *Tower & Infrastructure Providers Association Vs. Indore Smart City Development Ltd., I.L.R. (2019) M.P. 2448 (DB)*

– Section 7-B – Arbitration of disputes – Civil Suit for recovery towards the use of telephone by defendant – Concurrent findings of fact – Whether Civil Court is divested for its jurisdiction to try a Suit for recovery of bills for user of telephone in the light of provisions of Section 7-B – Held – No, appellant failed to establish clear bar for the civil Court to adjudicate as regard to recovery of bills: *Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak, I.L.R. (2016) M.P. 210*

– Section 10 & 16(1) – See – Electricity Act, 2003, Section 164: *Monica Nagdeo (Smt.) Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2016) M.P. 2209*

– Sections 10(b), (d) & 16 – Compensation – Jurisdiction – Held – In respect of the said acquisition, the surface of land is used in terms of Section 10(b) of the Act of 1885 and for such user, detail procedure is prescribed u/S 16 of the Act – Compensation is contemplated u/S 10(d) of the Act of 1885, and if compensation is found inadequate, party may seek adjudication of the same from the Court of District Judge within whose jurisdiction property is situated: *Bhawani Singh Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2018) M.P. 1389 (DB)*

TENDER

– Construction of Road – Petitioner – Lower Bidder – Rejection of Bid – Grounds – Non-fulfilment of term relating to technical capacity – Term – "Bidder shall, over the past five financial years preceding the Bid Due Date, have received payments for construction, such that the sum total thereof is more than Rs. 562/- Crores" – Bid Due Date is 24.02.2016 – Value of present project is Rs. 224.82 Crores – Petitioner submitted bid with technical capacity information for the period from 01.04.2011-31.03.2012 to 01.04.2015-15.02.2016 – Petitioner failed to furnish financial information from 01.04.2010 till 31.03.2011 – Held – The words "over the past five years" "preceding the Bid Due Date" would not include the financial information for the period from 01.04.2015 to 15.02.2016, as the Bid due date is 24.02.2016 and non-submission of financial information from 01.04.2010 to 31.03.2011 resulted in violation of the terms in clause 2.2.2.2 of the Tender document & for this reason, the requirement of receipt of Threshold Technical Capacity of Rs. 562/- Crores over the past five years is also not met out – Petition is dismissed notwithstanding the fact that the petitioner has

offered the lowest bid: *Bansal Construction Works Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. (2016) M.P. 2511 (DB)*

– Criteria – Held – NIT issued based upon recommendations of Expert Committee and are not contrary to public interest, discriminatory or unreasonable – If petitioner does not fulfill the terms and conditions of NIT, question of permitting them to participate in the process does not arise – No interference required – Petition dismissed: *Air Perfection (M/s) Vs. State of M.P., I.L.R. (2019) M.P. 1679 (DB)*

– Disqualification Clause – Judicial Review – Default by petitioners in performance of earlier contracts – Security Deposits forfeited by respondents which was further challenged before Arbitral Tribunal – Held – Mere pendency of dispute before Arbitral Tribunal would not mean that petitioners have not incurred disqualification as per tender condition particularly when tender conditions are applied in a transparent and in a non-discriminatory manner – Court in Judicial Review cannot hold that such condition is beyond jurisdiction of respondents: *MEIL Prasad (JV) Vs. State of M.P., I.L.R. (2018) M.P. 2150 (DB)*

– Liquor Trade – Rights & Duties – Held – Trade in liquor is not a fundamental right and is merely a privilege – Petitioner must follow each and every condition of tender notice – Respondents were not under obligation to apprise the petitioner about his default/mistakes: *Gwalior Alcobrew Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 1841*

– Power of State – Right of Contractor – Held – Whether a contractor is suitable to carry out work on behalf of State, the decision is of the State or its agencies or instrumentalities – Contractor cannot claim any right that even though his security deposit has been forfeited, State is bound to consider him eligible, just because the matter of forfeited security deposit is disputed and challenged by them before Arbitral Tribunal – Past experience of contractor is a relevant consideration for State to decide tender finally – As per disqualification clause, contractor was rightly not permitted to participate – No allegation that such policy decision is actuated with malice – No right accrues to petitioners to invoke writ jurisdiction – Petitions dismissed: *MEIL Prasad (JV) Vs. State of M.P., I.L.R. (2018) M.P. 2150 (DB)*

– Quashing of Auction Notice – As in the fact situation petitioner is failed to substantiate that he is entitled for the relief of execution of agreement in his favour – Auction notice can not be quashed – Petition is dismissed: *Manish Kumar Gupta Vs. State of M.P., I.L.R. (2016) M.P. 789 (DB)*

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT (34 OF 2003)

– Sections 3, 4, 6 & 21 and Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules 2004, Rule 3, Prohibition of Smoking in Public Places Rules, 2008, Rule 2, 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 144 – Prohibition of Hookah Lounge Bars – In the hotels having capacity of 30 or more rooms or restaurants having seating capacity of 30 persons or more, smoking may be permitted in the manner prescribed in the Act, 2003 – Without indicating violation of provisions of Act, 2003 and the Rules by the particular hotel or restaurants, passing a general order due to giving the bad name to Administration is unsustainable – Petition allowed with following directions – As the sale of tobacco products is strictly prohibited to the persons below the age of eighteen years and upto hundred yards of the educational institutions in the State, as per Section 6 of the COTP Act, however, it is directed that in case of any violation action ought to be taken applying the mandate of law – As per Section 4 of the COTP Act, smoking at a public place is prohibited subject to compliance of Rule 3 and 4 of the Rules of 2008 – However, it is directed that in hotels, restaurants and at other public places smoking can be permitted within the ambit of Rule 4 of the Rules, 2008 – The hotel and restaurant owners cannot be permitted to offer Hookah or use of tobacco products by pipe or by any other instruments on each and every table under the garb of service, in fact it can be permitted in a smoking area or space only – However, it is directed that smoking may be permitted in hotel and restaurants only in the smoking area or places otherwise action may be taken in accordance with law – In view of the discussion made hereinabove and looking to the spirit of Section 144 of Cr.P.C., the District Magistrate may pass the order in case of emergent situation and to check the anticipated action, visualizing danger to human life, health or safety or disturbance of the public tranquility and in other situations as specified – But the repetitive orders seem to be of semiperennial nature which is not permissible in law: *Restaurant & Lounge Vyapari Association Vs. State of M.P., I.L.R. (2016) M.P. *14*

– Sections 7, 8, 9 & 10 – Conflict with the Act of 2006 - Held – Act of 2003 has no conflict with provisions of Act of 2006 - Even though the Act of 2003 specifically deals with Tobacco Products but the same is an additional legislation apart from the Act of 2006 which is to be followed by the companies dealing in Tobacco Products used for chewing – In case of adulteration, Act of 2006 will have to be roped in for

prosecuting the delinquent companies or individual - In cases of misbranding, stipulations mentioned in both the Acts are to be strictly adhered to - Both Acts have independent penal provisions and shall have concurrent application with respect to tobacco products used for chewing - No illegality committed by the Trial Court – Application dismissed: *Manoj Kumar Jain Vs. State of M.P., I.L.R. (2018) M.P. 240*

– and Criminal Procedure Code, 1973 (2 of 1974), Section 144 – Additional District Magistrate u/S 144 of Code of Criminal Procedure, 1973 imposed ban on smoking hookah in restaurants – Order is challenged on the ground that petitioner is following COTP Act, 2003 & Rules 2008 and cannot be prohibited to do business, as the order is regulatory, not including power of prohibition & temporary in nature for two months – Held – Writ court rightly considered that hookah cannot be provided at each & every table in restaurant – If owner offers the same to customer, then same shall be inconsonance with the Act and Rules – Section 144 of Cr.P.C. provides power to grant only temporary order for two months & its nature is to regulate the power not to prohibit – Appeal allowed partly: *Rahul Kalra Vs. State of M.P., I.L.R. (2017) M.P. *25 (DB)*

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 (4 OF 2016)

– Section 8 and Constitution – Article 227 – Held – Apex Court concluded that Section 8 of the Act of 2015 cannot be read to mean that supervisory jurisdiction of this Court under Article 227 of Constitution is taken away in any manner: *Beyond Malls LLP Vs. Lifestyle International Pvt. Ltd., I.L.R. (2020) M.P. 2650 (DB)*

TITLE

– Burden of Proof – Held – Plaintiff in possession since 1946, various permissions have been granted to them by State Authorities and Municipal Corporation during 1961 to 1995 – Plaintiff established a high degree of probability in their favour – Onus shifted on defendant/State to prove the contrary, which they failed to discharge – Appeal dismissed: *State of M.P. Vs. Smt. Betibai (Dead) Through Her LRs., I.L.R. (2020) M.P. 2826*

TORTS

– Medical Negligence – Sterilization Operation Under Government Scheme – Compensation – After operation, respondent delivered a child – Trial Court granted compensation of Rs. 1,64,000 – Held – Plaintiff has not examined any doctor to prove negligence of Surgeon nor to establish that abortion was not possible – No

treatment papers of any doctor exhibited – As per evidence, plaintiff continued with pregnancy and delivered the child and thereafter filed a suit for compensation – As per Government policy, respondent granted sum of Rs. 30,000 as compensation – Appeal partly allowed: *State of M.P. Vs. Smt. Rekha, I.L.R. (2019) M.P. 2560*

– Medical Negligence – Sterilization Operation Under Government Scheme – Motive & Intention – Held – Operation held as per programme of State Government through Health Department, which was conducted free of cost – Motive behind operation cannot be said to be of ulterior motive – It cannot be presumed that since it was a mass level operation, negligence must have been caused: *State of M.P. Vs. Smt. Rekha, I.L.R. (2019) M.P. 2560*

TOWN IMPROVEMENT TRUST ACT, M.P., 1960 (14 OF 1961)

– Section 52 & 87(c)(iii) – See – Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 3 & 5: *Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 16 (DB)*

– Section 71(1) and Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994) – Acquisition of Land – Use of Land – Right of Trust – Land of appellants were acquired vide notification u/S 71(1) of the Act of 1960 – Land was not used by the Trust as for the purpose, it was acquired – Appellant filed a writ petition which was dismissed – Challenge to – Held – Once a notification has been published u/S 71(1) of the Act of 1960, the land owned by appellants vest in the Trust absolutely free from all encumbrance and Trust can utilize the acquired land for any other purpose which it deems appropriate – Trust, using the acquired land by carving out residential plots cannot be said to be illegal – No merit in appeal and is dismissed: *Arvind Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 1623 (DB)*

– Section 72(2), Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994), Section 3 and Land Acquisition Act (1 of 1894), Section 18 – Compensation – Agreement – Jurisdiction of Court – In the instant case, no proceedings were initiated for determination of amount of compensation by an agreement in terms of Section 72(2) of the Act of 1960 nor the matter was referred to the Tribunal – Act of 1960 was repealed by the Act of 1994 where Section 3 of the Act of 1994 shows that pending proceedings before the Tribunal will continue as if Municipality was a party and if proceedings are filed after the repealed Act, it shall be disposed of by the Court of District Judge of the concerned district as if reference made to that Court u/S 18 of the Land Acquisition Act, 1894 – Appellant permitted to invoke jurisdiction of filing proceeding before the District Judge within 90 days from today: *Arvind Kumar Jain Vs. State of M.P., I.L.R. (2017) M.P. 1623 (DB)*

TRADE MARKS ACT (47 OF 1999)

– Sections 103, 104, 105 & 115(4)(5) – Search and Seizure – Opinion of Registrar – Held – Prior to search and seizure by police officer, in case offence is registered u/S 103, 104 & 105, opinion of Registrar is sin qua non/mandatory as provided u/S 115(4) of the Act of 1999 – Search, seizure and locking factory premise without opinion of Registrar in furtherance to the registration of offence is not valid and is illegal – Further held – u/S 115(5) remedy is for restoration of articles seized during search and seizure – Such provision cannot be said to be efficacious remedy to challenge the search and seizure – Respondents directed to open the lock of factory premises and allow appellant to work as per law – Appeal allowed: *Pitambra Industries Vs. State of M.P., I.L.R. (2018) M.P. 2093 (DB)*

– Section 115 (4) – As per allegation in FIR, applicants committed offence u/S 102 of the Act – Police Officer not below the rank of Deputy Superintendent of Police, shall obtain opinion of Registrar before search & seizure – In present case, procedure has not been complied with – Court is not competent to take cognizance of the offence u/S 103 of the Act – To continue such proceedings is misuse of process of law: *Kasim Ali Vs. State of M.P., I.L.R. (2016) M.P. 2624*

– Section 142 – Groundless threats of Legal Proceedings – Injunction Suit – Maintainability – Appeal against dismissal of suit of Appellant/plaintiff for permanent injunction seeking restraint order against Respondent/defendant for issuance of groundless threats, declaration and damages u/S 142 of the Act of 1999 – Held – Section 142 entitles the person to bring an action or proceeding for infringement whether the person making groundless threats of legal proceeding is or is not the registered user of the trade mark and bring a suit against the defendant unless the first mentioned person, defendant satisfies the Court that trade mark is registered and that the acts in respect of which proceedings were threatened, constitute, or if done, would constitute an infringement of trade mark – Trial Court has not properly appreciated the provisions of Section 142 of the Act of 1999 – Suit is maintainable, trial Court directed to decide the suit on merits – Appeal allowed: *Ahilya Vedaant Education Welfare Society Vs. K. Vedaant Education Society, I.L.R. (2018) M.P. 726*

TRANSFER OF PROPERTY ACT (4 OF 1882)

– Section 3 – Actionable claim – Whether the loss of pay order and its subsequent misuse can give rise to an actionable claim against the appellant and whether trial court was right in holding the appellant liable to compensate the loss on the basis of the evidence on record – Held – After loss of the printed pay order form, the Head Office of the Bank has taken steps vigilantly and promptly issued circular,

much prior to the date of incident, hence Bank has sufficiently discharged its duty and onus – No actionable claim can be raised against the appellant Bank because to be actionable claim and get redress from Court, the liability must assume legal shape in any recognized category of wrong such as negligence, malfeasance, misfeasance and non-feasance etc. – Further held – From the facts and evidence it is established that there was no contractual and tortious liability of the appellant Bank for compensating respondent No. 1: *Bank of Maharashtra Vs. M/s. ICO Jax India Deedwana Oli Lashkar Gwalior, I.L.R. (2017) M.P. 645*

– Section 3 – Attesting witness – Held – The scribe appends his signature on the 'will' as scribe – He is not a witness to the 'will' but a mere writer of the 'will' – The element of the animus to attest is missing i.e., intention to attest is missing – His signature is only for the purpose of authenticating that he was a scribe of the 'will': *Noorbaksh Khan Vs. Salim Khan, I.L.R. (2016) M.P. 520*

– Section 43 – Reliefs – Maintainability of Suit – Possession of suit land was given to purchaser appellant/defendant and as per evidence on record, he was in possession after execution of sale deeds – Suit by respondent/plaintiff for declaration of sale deed as void, without seeking relief of possession is not maintainable – Further, no specific plea as to want of necessity raised in civil suit – Judgment and decree passed by Courts below are set aside – Appeal allowed: *Ramgopal Through L.Rs. Vs. Smt. Jashoda Bai Through L.Rs., I.L.R. (2017) M.P. 2978*

– Section 52 – Transfer of Property during pendency of Suit – Subsequent Purchaser – Right to Lead Evidence – Held – Where suit property is sold during pendency of suit without seeking leave from Court, then the transferee steps into the shoes of transferor and he is bound by the decree which would be passed in suit – Subsequent purchaser does not get any right to lead evidence as he stepped into the shoes of defendant, whose right to lead evidence is already closed by the Court in present case – Further, subsequent purchaser/petitioner cannot be allowed to take contrary stand to the one taken by his transferor: *Ramswaroop Vs. Matadin Shivhare (Dead) Through L.Rs., I.L.R. (2019) M.P. *21*

– Section 54 – Contract for sale – Does not confer any right and title – Not a document of acquisition of title and possession: *Kishorilal Tiwari Vs. Kandhilal, I.L.R. (2016) M.P. 512*

– Section 54 – Deed of Conveyance – "Agreement to Sale" & "Sale Deed" – Suit for Specific Performance of Contract – Trial Court refused applicant to exhibit a document of sale holding it to be an unregistered/unstamped sale deed – Challenge to – Held – Transfer of immovable property by way of sale can only be by way of duly stamped and registered deed of conveyance i.e sale deed and in absence of

which, no right, title or interest on immovable property can be transferred – Agreement of sale whether with or without possession is not a conveyance – Said document cannot be held to be a sale deed – Impugned order set aside – Trial Court directed to permit plaintiff to exhibit the document – Revision allowed: *Choubi Singh Rathore Vs. Lakshman Singh, I.L.R. (2018) M.P. *89*

– Section 54 – Held – Agreement of sale itself does not create any interest or charge in the property: *Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad, I.L.R. (2017) M.P. 1154*

– Section 54 – See – Evidence Act, 1872, Sections 68, 69 & 90: *Ramcharan Vs. Damodar, I.L.R. (2017) M.P. 1882*

– Section 55 – Payment of Sale Consideration – Held – Payment of sale consideration is simultaneous act with execution of sale deed – Nothing in decree which required respondents to deposit entire consideration amount irrespective of whether sale deed could have been executed or not – All sorts of legal hurdles were created in order to avoid execution of decree – No delay on part of respondents in depositing consideration amount before Court: *Harjeet Vs. Abhay Kumar, I.L.R. (2019) M.P. 594*

– Section 55 – See – Specific Relief Act, 1963, Section 34: *Kalyan Singh Vs. Sanjeev Singh, I.L.R. (2018) M.P. 1523*

– Section 58-C – Mortgage by Conditional Sale – Appreciation of Evidence – Held – Apex Court conclude that if sale and agreement to repurchase are embodied in separate documents then transaction cannot be a mortgage whether the documents are contemporaneously executed or not – In present case, no clause of re-conveyance incorporated in registered sale deed – Original plaintiffs did not appeared in witness box to lead evidence to establish fact of mortgage deed although the burden to prove the same was on plaintiff – Trial Court rightly held the sale deed to be an absolute sale transaction and not a mortgage with conditional sale – Appellate Court erred in reversing the decree – Appeal allowed: *Rameswar Dubey Vs. Mahesh Chand Gupta (Dead) through L.Rs., I.L.R. (2019) M.P. 1094*

– Section 58(f) & 65(a) – Mortgage by deposit of title deed – Mortgagors power to lease – Guarantor on behalf of M/s Venkateshwars has mortgaged his property by deposit title deed in the year 2012 – Thereafter, guarantor has undertaken inter alia not to lease out the said property during currency of the said loan without permission of the respondent bank – Thereafter, property was leased out without permission of the bank vide lease deed – Lease deed is not binding on bank – Therefore, District Magistrate was justified in passing the impugned order and Tehsildar was also justified in passing the order dated 09.03.2016 and issuance of notice on 16.03.2016

– Petition dismissed: *Ashish Mittal Vs. Bank of Baroda, I.L.R. (2017) M.P. *1*

– Section 105 – Lease & Agreement for Lease – Difference – Held – For an agreement to be considered as lease and not as an agreement to lease it is important that there must be an actual demise of property on date of agreement – In instant case, agreement was not a lease but simply an agreement giving rise to contractual obligations – Clauses of agreement goes to show that it was not a lease agreement but an agreement to enter into lease – Appeal dismissed: *Ramnath Agrawal Vs. Food Corporation of India, I.L.R. (2020) M.P. 1807 (SC)*

– Section 105 & 116 – "Tenant at Sufferance" & "Tenant at Holding Over" – Held – After expiration/ determination of terms of lease, if tenant remains in possession without consent of lessor, he is "Tenant at Sufferance" and is liable for eviction – If tenant continues to be in possession with consent of lessor, he is a "Tenant at Holding Over" – If lease agreement contains term of lease with renewal clause, there is no automatic renewal of lease, instead is subject to positive act of renewal in terms of the clause: *Rakesh Jain Vs. State of M.P., I.L.R. (2019) M.P. 1041*

– Section 108 – See – Municipal Corporation Act, M.P., 1956, Section 80: *Girdhar Jetha Vs. Municipal Corporation, through the Commissioner, Nagar Nigam, Jabalpur, I.L.R. (2016) M.P. 1745 (DB)*

– See – Government Grants Act, 1895, Section 2 & 3: *Adarsh Balak Mandir Vs. Chairman, Nagar Palika Parishad, Harda, I.L.R. (2019) M.P. 1717*

– Section 109 – Apportionment of Rent – Held – Determination of apportionment of rent by plaintiffs unilaterally does not adversely affects the right of appellant/tenant – Plaintiff is not claiming that possession of appellant is of a tresspasser or he is not their tenant – Plaintiffs was not required to take recourse of Section 109 of the Act of 1954 – Suit is maintainable: *Siremal Jain (Dead) Through His LR Vs. Pankaj Kumar Jain, I.L.R. (2019) M.P. 1861*

– Section 109 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) & 12(1)(c): *Babu Lal Vs. Sunil Baree, I.L.R. (2017) M.P. 2692*

TRANSIT (FOREST PRODUCE) RULES, M.P., 2000

– Rule 5 – Notification dated 28.05.2001 – Validity – Held – High Court held that Rule framed by the State u/S 41 of the Act of 1927, i.e. Rule 5 of the Rules of 2000 is valid – High Court has taken an incorrect view that notification dated 28.05.2001 is beyond the power of the State under Rule 5 of the Rules, 2000 – Rule 5 clearly empowers the State to fix the rate of fee, on the basis of quantity/volume of Forest Produce – High Court committed error in setting aside the notification dated

28.05.2001: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

TRANSIT OF TIMBER & OTHER FOREST PRODUCE RULES, U.P., 1978

– Rule 3 – Transit Pass – Transit Fee – Transit pass is necessary as per Rule 3 for moving a forest produce into or from or within the State of U.P. – Any produce, goods entering within or outside the State which is the forest produce having originated in forest requires a transit pass for transiting in the State of U.P. – Any good which did not originate in forest whether situate in the state of U.P. or outside the State but is only passing through a forest area may not be a forest produce – Further held – Transit fee charged under the 1978 Rules is regulatory fee in character and state is not to prove quid pro quo for levy of transit fee: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

– Rule 5 – Validity of Fourth and Fifth Amendment Rules – Increase in Fee – Held – Although State is not required to prove any quid pro quo for levy or increase in fee but a broad co-relation has to be established between expenses incurred for regulation of Transit and the fee realized – It is rightly noticed that the expenditure claimed by the State is not only confined to expenditure for regulation of transit but also other expenditures of the forest department as well – Increase in transit fee was excessive and character of fee has changed from simple regulatory fee to a fee which is for raising revenue – High Court rightly strike down the Fourth and Fifth Amendment: *State of Uttarakhand Vs. Kumaon Stone Crusher, I.L.R. (2018) M.P. 263 (SC)*

U

UCHCHA NYAYALAYA (KHAND NYAYPEETH KO APPEAL) ADHINIYAM, M.P., 2005 (14 OF 2006)

– Section 2 – Intra-Court Writ Appeal – Averments of malafide taken in the Writ Petition but not agitated before the Single Judge – Such a ground can not be considered for the first time in intra-Court appeal: *Gram Panchayat, Hardi Vs. Anil Dixit, I.L.R. (2016) M.P. 1262 (DB)*

– Section 2 and Limitation Act (36 of 1963), Section 5 – Condonation of delay – Delay of three years – Impugned order passed on the basis of judgment passed in another case against which Writ Appeal was already dismissed– Govt. Advocate clearly opined to comply with the impugned order – Appeal was filed only after issuance of notice for contempt – Held – Action on the part of State shows high

handedness in not complying with the order of Court – Application for condonation of delay dismissed with cost of Rs. 25,000/-: *State of M.P. Vs. Moolchand Upadhyay, I.L.R. (2016) M.P. 5 (DB)*

– Section 2(1) – Interlocutory order – Any order, even though interlocutory in nature decides a question/issue finally or affects a vital and valuable rights which may cause injustice to a person, the same is not an interlocutory order – Writ Appeal maintainable: *Durjan Ahirwar Vs. State of M.P., I.L.R. (2016) M.P. 8 (DB)*

– Section 2(1) – Writ Appeal – Locus – Held – Writ Appeal filed by Collector in personal capacity – Appellant, being a party affected inasmuch as contempt proceedings have been drawn against him on the basis of order passed in writ petition, has a locus: *Madan Vibhishan Nagargoje Vs. Shri Shailendre Singh Yadav, I.L.R. (2019) M.P. 1981 (DB)*

– Section 2(1) – Writ Appeal – Maintainability – Held – No writ appeal would be maintainable against an order passed by Single Judge in a proceeding arising out of an order passed by Judicial Court either in civil or criminal proceedings – Appeal dismissed: *Sumit Khaneja Vs. State of M.P., I.L.R. (2020) M.P. 314 (DB)*

– Section 2(1) – Writ Appeal – Scope & Jurisdiction – Held – Apex Court concluded that in an intra-Court appeal, Appellate Court is a Court of Correction which corrects its own orders, in exercise of same jurisdiction as was vested in Single Bench: *Purushottam Sahu Vs. Devkinandan Dubey, I.L.R. (2019) M.P. 2243 (DB)*

– Section 2(1) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Writ Appeal – Scope & Jurisdiction – Petition u/S 482 dismissed by Single Judge – Writ Appeal filed – Held – Full Bench concluded that no appeal would be maintainable against an order passed by Judicial Court in civil or criminal proceedings – Writ Appeal not maintainable and is dismissed: *Pradeep Kori Vs. State of M.P., I.L.R. (2020) M.P. 660 (DB)*

– Section 2(1) and Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(4) – Writ Appeal – Maintainability – Held – Division Bench of this Court has earlier, in case of Balu Singh has opined that as per Section 39(4) of 1993 Adhiniyam, once office bearer is placed under suspension, such person shall also be disqualified for being elected during suspension period – Since consequences of such order is of final nature, writ appeal is maintainable: *Dhara Singh Patel Vs. State of M.P., I.L.R. (2020) M.P. 2426 (DB)*

– Section 2 (1) and Penal Code (45 of 1860), Section 460 – Investigation by C.B.I. – Accused persons not arrested inspite of information with regard to their involvement was already collected – Case diary also appears to be tampered – Section

302 of IPC added 12 days after crime – Murder of four persons of the same family – Considering the case diary entries, various police press notes, inaction on the part of investigating agency in not taking action against persons who had allegedly confessed their involvement in case – Investigation not fair and impartial – Held – Fit case for fresh investigation by C.B.I. – Appeal allowed: *Mithlesh Rai Vs. State of M.P., I.L.R. (2016) M.P. 667 (DB)*

UCHCHATAR NYAYIK SEWA (BHARTI TATHA SEWA SHARTEIN) NIYAM, M.P., 1994

– Recruitment of District Judges – Character Verification – Criminal Case – Rejection of candidature on ground of pending criminal case – Held – Since at the time of character verification, appellant had not been acquitted and was subsequently acquitted after more than a year from rejection of his candidature, appellant rightly held unsuitable for the post – High Court rightly dismissed the petition – Appeal dismissed: *Anil Bhardwaj Vs. The Hon'ble High Court of M.P., I.L.R. (2020) M.P. 2735 (SC)*

UDYOG NIVESH SAMVARDHAN YOJNA, M.P., 2010

– Clause 3.4 & 9 and Udyog Samvardhan Niti, (MP) 2014, Clause 10.7 & 10.11 – Exemptions and Concessions – Principle of Promissory Estoppel – Powers of State Government – State Government launched scheme of 2010 whereby certain exemptions and concessions were granted to industries – Subsequently, State introduced a scheme of 2014 whereby some exemptions and concessions related to VAT and CST were withdrawn – Challenge to – Held – Grant or continuation of any exemption by State Government are sole prerogative of the State Government and are always open to review when higher exemptions were being availed than the actual payment of tax – Such concessions cannot be claimed as a right – Government has sole and exclusive power to either completely withdraw the concessions and exemptions or to alter them – There can be no promissory estoppel against legislature in exercise of its legislative functions – Amending the policy retrospectively was done in public interest to protect State exchequer and to prevent unjust enrichment, which cannot be said to be unjust and unreasonable – Petitions dismissed: *Venkatesh Industries (M/s.) Vs. Department of Commerce, Industry & Employment, I.L.R. (2018) M.P. *58 (DB)*

UDYOG SAMVARDHAN NITI, M.P., 2014

– Clause 10.7 & 10.11 – See – Udyog Nivesh Samvardhan Yojna (MP) 2010, Clause 3.4 & 9: *Venkatesh Industries (M/s.) Vs. Department of Commerce, Industry & Employment, I.L.R. (2018) M.P. *58 (DB)*

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

– Article 12 – See – Constitution – Article 21: *Shashimani Mishra Vs. State of M.P., I.L.R. (2019) M.P. 1397*

UNIVERSITY GRANTS COMMISSION (MINIMUM QUALIFICATIONS FOR APPOINTMENT AND CAREER ADVANCEMENT OF TEACHERS IN AFFILIATED UNIVERSITIES AND INSTITUTIONS) (3RD AMENDMENT) REGULATIONS, 2009

– Regulation 1.3.3 – Lecturer – Minimum Qualifications – Exemption – NET qualification is now minimum qualification for appointment of lecturer and exemption granted to M.Phil degree holders have been withdrawn and exemption is allowed only to those Ph.D. degree holders who have obtained degree in accordance with, UGC (Minimum Standards and Procedure) Regulations published on 11.07.2009 – In the present case, no interference is called for – Appeals disposed with directions that eligibility of petitioners be considered taking also into consideration the UGC (Minimum Qualification for Appointment) Regulations, 2009: *State of M.P. Vs. Manoj Sharma, I.L.R. (2018) M.P. 620 (SC)*

UNIVERSITY GRANTS COMMISSION MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITY AND COLLEGES AND MEASURES FOR MAINTENANCE OF STANDARDS OF HIGHER EDUCATION, REGULATION 2010

– See –Vishwavidyalaya Adhiniyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j): *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299 (FB)*

UNIVERSITY GRANTS COMMISSION (MINIMUM STANDARDS AND PROCEDURE FOR THE AWARD OF M.PHIL/PH.D DEGREE) REGULATIONS, 2009

– Regulation 3 & 5 – Appointment of Guest Lecturers – Qualifications – Held – Regulations of 2009 by which university and institutions were prohibited from conducting M.Phil/Ph.D through distance education mode, came into effect from 11.07.2009 and are prospective in nature – Degree obtained prior to the enforcement

will not be washed out – High Court rightly directed the respondent State to consider the case of the petitioners on the basis of M.Phil. degree obtained prior to enforcement of Regulation of 2009: *State of M.P. Vs. Manoj Sharma, I.L.R. (2018) M.P. 620 (SC)*

UPKAR ADHINIYAM, M.P., 1981 (1 OF 1982)

– Section 3(1) and Constitution, Entry 53 of List II of Schedule VII – Imposition of Tax – Validity – Held – Consumption of electric energy even by one who generates the same may be liable to be taxed by reference to Entry 53 and if State legislature chooses to impose tax on consumption of electricity by one who generate it, such tax would not be deemed to be a tax necessarily on manufacture or production – By virtue of Sanshodhan Adhiniyam, the taxing event being for the supply, sale and consumption of electricity is well within the legislative competence of State Legislature – Further held – After generation of electricity which cannot be stored there has to be consumption which is done through distribution thus these three are separate in nature and not inseparable – State under Entry 53 of list II of Schedule VII of the constitution can levy tax on consumption of the electricity so generated – Petition dismissed: *Deepak Spinners Ltd. Vs. State of M.P., I.L.R. (2018) M.P. 38 (DB)*

– Section 6, Part II – See – Municipal Corporation Act, M.P., 1956, Sections 132(1)(c)(d)(e), 132-A & 132(6)(o): *Essarjee Education Society Vs. State of M.P., I.L.R. (2016) M.P. 2982 (DB)*

URBAN ENGINEERING SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 2015

– Schedule 1 – Deputation – Consent – Held – Petitioner, employee of Urban Administration Department – As per Schedule 1 of Rules, posting of Superintendent Engineers and Executive Engineers on deputation to Municipal Corporation is already provided, hence consent of employee is implicit – Rule do not provide for any separate consent – No infirmity in impugned order of transfer – Petition dismissed: *Arun Kumar Mehta Vs. State of M.P., I.L.R. (2020) M.P. *23*

URBAN LAND (CEILING AND REGULATION) ACT (33 OF 1976)

– Section 10 and Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999) – Mutation of name in revenue records – Due to non-compliance of Section 10(5) and 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976, physical possession has not been taken from holder on the date of commencement of the Repeal Act, however, the proceedings shall stand abate – Respondents shall record

the name of the petitioner in revenue papers – Petition allowed: *Thamman Chand Koshta Vs. State of M.P., I.L.R. (2016) M.P. 1896*

– Section 10 & 20 – Notice of Collector requiring the petitioner to handover the possession of surplus land assailed on the ground that an application u/s 20 is pending consideration – Therefore, the notice is without jurisdiction – Though the name of Government entered in the revenue record, petitioner is in possession of the disputed land – Notice is vitiated and contrary to the provisions of law – Held – Kabza panchnama is merely a paper formality designed to frustrate the provisions of the Repeal Act – Even the impugned notice does not indicate that the possession was with the State Government – There is no compliance of provisions contained u/s 10 (5) of the Act – Possession still rests with the petitioner – Although the possession is alleged to have been taken in the year 1984 but Khasra entry upto 1988 indicates the possession of the petitioner – Notice requiring hand over the possession is quashed – Petition is allowed: *Sunil Vs. State of M.P., I.L.R. (2016) M.P. 86*

– Section 10(3) – Notification – Acquisition of vacant land in excess of ceiling limit – In an earlier writ petition, the original land owner was unsuccessful to get the land exempted under the Act – Held – Notification u/S 10(3) was issued on 09.04.1999 and petitioners have purchased the land on 05.04.2004 – Apex Court has held, that third party purchaser, purchasing the property after issuance of notification u/S 10(3) of the Act of 1976, does not have any locus to claim the same – Petition dismissed: *Ambrish Vs. State of M.P., I.L.R. (2018) M.P. *48*

– Sections 10(3), 10(5) & 10(6) and Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Sections 3(2) & 4 – Ceiling proceedings – Original owner Smt. Godavari Bai – Land declared surplus as per Section 10(3) of 1976 Act on 04.06.1981 – Final Notification published on 14.03.1986 – Godavari Bai died on 13.09.1982 – Notice u/S 10(5) of 1976 Act for delivery of possession issued in name of Godavari Bai, who died prior to issuance of notice – Notice received by one Mukesh Dubey – Defence – Possession already taken on 19.08.1988 or on 03.03.1992 – Held – Notice u/S 10(5) of the 1976 Act was issued in the name of deceased holder Godavari Bai, who was already dead, so issuance of notice u/S 10(5) of the Act is invalid and service on one Mukesh Dubey does not satisfy the requirement of Section 10(5) of 1976 Act – Proceedings for delivery of possession on 19.08.1988 or on 03.03.1992 were on papers only & defacto possession has not been taken & even proceedings u/S 10(6) of the Act of 1976 has not been drawn – Ceiling proceedings pending under the 1976 Act before commencement of the repeal Act shall abate – Name of petitioners be restored in the revenue records & name of State Government be deleted – Petition allowed: *Gayatri Devi (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3310*

URBAN LAND (CEILING AND REGULATION) REPEAL ACT (15 OF 1999)

– Section 3(2) & 4 – See – Urban Land (Ceiling and Regulation) Act 1976, Sections 10(3), 10(5) & 10(6): *Gayatri Devi (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3310*

V

VAN UPAJ VYAPAR (VINIYAMAN) ADHINIYAM, M.P. (9 OF 1969)

– Section 5 & 15 and Forest Act (16 of 1927), Section 26 & 41 – Confiscation of Seized Property – Illegal transportation of teak wood – Tractor and trolly seized – Confiscation order passed by forest authority/SDO under provisions of Adhiniyam – In revision before the Session Court, seized vehicle was directed to be released – High Court upheld the order of release of seized vehicle – Challenge to – Held – Criminal prosecution is distinct from confiscation proceedings under the Adhiniyam – Both proceedings are different and parallel – Section 15 gives power to concerned authority to confiscate the articles even before the guilt is completely established – Confiscation being incidental and ancillary to conviction, State Government has separated the process of confiscation from process of prosecution – Order passed by High Court is set aside – Appeal allowed: *State of M.P. Vs. Smt. Kallo Bai, I.L.R. (2017) M.P. 2063 (SC)*

– Section 5 & 16 – See – Criminal Procedure Code, 1973, Section 468 & 473: *Vinay Sapre Vs. State of M.P., I.L.R. (2018) M.P. 815*

– Section 15(5) – Protection to owners of seized vehicle – Held – A protection is provided for the owners of seized vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged u/S 15(5) of the Adhiniyam and the said offence was committed without their knowledge and connivance: *State of M.P. Vs. Smt. Kallo Bai, I.L.R. (2017) M.P. 2063 (SC)*

VAS-STHAN DAKHALKAR (BHUMISWAMI ADHIKARON KA PRADAN KIYA JANA) ADHINIYAM, M.P. (4 OF 1980)

– Section 4 – Charnoi land – Revenue Authorities – No power to grant patta: *Ravi Shankar Sarathe Vs. State of M.P., I.L.R. (2016) M.P. 404*

VAT ACT, M.P. (20 OF 2002)

– Section 2(u) & 2(v) and Finance Act (32 of 1994) and Constitution, Article 246 – Levy of Service Tax and VAT – State Government levied service tax on petitioner company on the services rendered by providing SIM replacement charges and Lease Line Revenue and simultaneously levying VAT – Challenge to – Held – Supreme Court held that no sales tax can be charged for providing a SIM, hence question of charging of tax on replacement of SIM does not arise – SIM card is not sold to subscriber but merely forms part of the services rendered and cannot be charged separately to sales tax – Further, in case of levy of VAT on lease line, since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein – Section 2(u) and 2(v) of MP Vat Act, 2012 is ultra-vires and void so far it relates to imposition of VAT on SIM replacement charges and lease line revenue, which are merely services – Demand order and Notice issued by assessing authority is hereby quashed – Petition allowed: *Idea Cellular Ltd., Indore (M/s.) Vs. The Asstt. Commissioner of Commercial Tax LTU, Indore, I.L.R. (2017) M.P. 1350 (DB)*

– Sections 2(1), 2(1)(a) & (d) – See – Entry Tax Act, M.P., 1976, Section 3(1): *Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2019) M.P. 102 (DB)*

– Section 14(1AA), Entry 6 in Part III of Schedule II – Regasified Liquified Natural Gas (RLNG) – Rebate of Input Tax – Appellant claiming full tax rebate on RLNG – Held – Entry 6 in Part III of Schedule II during relevant year was natural gas including compressed natural gas – Definition of Natural Gas is not exhaustive but is inclusive of all variants of natural gas which includes RLNG also – In terms of Section 14(1AA), appellant entitled to input tax rebate @ 5% since appellant used RLGN as fuel in manufacture of goods – Impugned order is not erroneous – Appeal dismissed: *Mondelez India Foods Pvt. Ltd. (M/s.) Vs. The Commissioner of Commercial Tax M.P., Indore, I.L.R. (2018) M.P. *105 (DB)*

– Section 36(1)(iii) – Export Transaction – Declaration Form 'H' – Delay – Held – If appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted in appeal as additional evidence in support of his claim for deduction – Provision requiring filing of declaration forms alongwith return is directory and not mandatory – Appellate Board directed to take Form 'H' by appellant on record and decided afresh – Appeal allowed: *Itarsi Oils & Flours Pvt. Ltd. Vs. State of M.P., I.L.R. (2020) M.P. 231 (DB)*

– Section 46 & 47 – Suo Motu Revisional Power – Show cause notice issued to petitioner regarding suo motu revision against him – Petitioner filed objection which was dismissed – Challenge to – Held – Section 46 and 47 of the Act of 2002 provides no further appeal or revision – Order passed by Dy. Commissioner of Commercial Tax (Appeal) is final and is not amenable to suo motu revisional power conferred by Section 47 of the Act – Further held – Every taxing statute must be read according to natural construction of its words – Impugned order set aside – Petition allowed with cost of Rs. 10,000/-: *Goldie Glass Industries Vs. State of M.P., I.L.R. (2017) M.P. *137 (DB)*

– Entry 19A of Part II of Schedule II & Part IV of Schedule II – Cough Drops "Halls" – Drug or Candy – Held – Appellant has got registration under the Drugs & Cosmetics Act, 1940 will not ipso facto make the cough drops "Halls" as Drug, as the registration certificate itself stipulates that it is a candy – No medicinal value of the cough drop rather used as mouth freshener – It does not fall within Entry 19A of Part II of Schedule II of the Act of 2002 and will fall within the residuary entry contained in Part IV of Schedule II of the Act – Appeal dismissed: *Mondelez India Foods Pvt. Ltd. (M/s.) Vs. The Commissioner of Commercial Tax M.P., Indore, I.L.R. (2018) M.P. *105 (DB)*

VAT RULES, M.P., 2006

– Rule 4(5) – See – Judicial Service Pay Revision, Pension and other Retirement Benefits Rules, M.P., 2003, Rule 9: *Praveen Shah Vs. State of M.P., I.L.R. (2016) M.P. *7*

VIDYUT SHULK ADHINIYAM, M.P. (17 OF 2012)

– Section 3(1), Part A, Entry 6 – See – Electricity Duty Act, M.P., 1949, Section 3(1), Part B, Entry 3: *Vandey Matram Gitti Nirman (M/s.) Vs. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2020) M.P. 608 (FB)*

VIDYUT SUDHAR ADHINIYAM, M.P., 2000 (4 OF 2001)

– Section 41 and Electricity Act (36 of 2003), Section 111 – Appeal – Preliminary objection – Whether appeal u/S 41 of the Adhiniyam of 2000 is maintainable against the order of the M.P. Electricity Regulatory Commission – Held – Though the Regulatory Commission is established under the said Adhiniyam, the powers and functions of the Commission is not traceable to the said Adhiniyam – Impugned order passed by the Commission under the Act of 2003 – It is beyond comprehension as to how appeal u/S 41 of the said Adhiniyam would lie – Statutory appeal u/S 111 of the Act of 2003 would lie to the Appellate Tribunal – Appeal u/S 41 of the said Adhiniyam

not maintainable – Appeals disposed of: *Jaiprakash Associates Ltd. Vs. Madhya Pradesh Electricity Regulatory Commission, I.L.R. (2017) M.P. 61*

VIKAS PRADHIKARANO KI SAMPATIYO KA PRABANDHAN TATHA VYAYAN NIYAM, 2013

– Inter Change of Plots – Applicability of Rules – Held – Scheme was introduced by respondents in 1994 and allotment in favour of petitioner have been done in 1994, therefore provisions of Niyam of 2013 would not apply in case of interchange of plot between one sector to another sector: *Sunil Dangi Vs. Indore Development Authority, I.L.R. (2019) M.P. 367*

VIKAS PRADHIKARANO KI SAMPATIYO KA PRABANDHAN TATHA VYAYAN NIYAM, M.P., 2018

– Rules 5, 6 & 7 & Constitution – Article 14, 39(b) & 226 – Disposal of Properties – Allotment of Plot – Writ of Mandamus – Validity – Held – There cannot be any allotment de hors to statutory allotment rules – In respect of allotment of plot to respondent, writ of mandamus cannot be issued to Indore Development Authority as done by the single judge compelling them to perform a duty or to do something which is not provided under statute – IDA is free to allot the land in accordance with law keeping in view the Rules of 2018 which provides a procedure of allotment – Mandamus cannot be issued compelling authorities to execute lease deed in favour of respondent – Impugned order quashed – Writ Appeal allowed: *Indore Development Authority Vs. Sansar Publication Pvt. Ltd., I.L.R. (2019) M.P. 742 (DB)*

VINDHYA PRADESH ABOLITION OF JAGIRS AND LAND REFORMS ACT (11 OF 1952)

– Section 26 & 28 – See – Rewa State Land Revenue and Tenancy Code, 1935, Section 44: *Jagdish Prasad Patel (Dead) Through L.Rs. Vs. Shivnath, I.L.R. (2020) M.P. 43 (SC)*

– Section 37 & 38 – Civil Suit – Maintainability – Held – As the suit property is vested in State under provisions of the Act of 1952, so those proceedings could not be challenged by way of Civil Suit: *Jwala Prasad Vs. State of M.P., I.L.R. (2016) M.P. 1133*

VINDHYA PRADESH LAND REVENUE AND TENANCY ACT, 1953 (3 OF 1955)

– Section 149, 151(2) & (3) – See – Rewa State Land Revenue and Tenancy

Code, 1935, Section 57(4): *Ramakant Pathak Vs. State of M.P., I.L.R. (2017) M.P. 2699*

VISHESH NYAYALAYA ADHINIYAM, M.P., 2011 (8 OF 2012)

– Object – The object of Adhiniyam is to expedite trials of offences related to disproportionate assets punishable u/S 13(1)(e) of the PC Act, simplicitor or in combination with other offences under IPC by establishment of Special Courts and laying down procedure for confiscation of unaccounted property and money procured by means of offences as defined u/S 2(1)(e) of 2011 Adhiniyam: *Vinay Kumar Vs. State of M.P., I.L.R. (2017) M.P. 2283*

– Section 2(1)(e) – See – Prevention of Corruption Act, 1988, Section 13(1)(e): *Vinay Kumar Vs. State of M.P., I.L.R. (2017) M.P. 2283*

– Section 13 and Vishesh Nyayalaya Niyam, M.P., 2012 – Rules 10(1), (2) & (3) – Statement of Defence – Period of Limitation – As per Rules of 2012, a period of 30 days time to file statement of defence is permitted which can be extended to further period of 15 days and if it is not filed as per time prescribed, Authorized Officer has no option but to presume that affected person has no defence to put forward and to proceed with adjudication of the matter – Provision is mandatory – Appellant filing statement of defence after two years from date of service of notice – Authorized Officer rightly refused to take statement of defence on record – Appeal dismissed: *Mahesh Vs. State of M.P., I.L.R. (2019) M.P. 629*

VISHESH NYAYALAYA NIYAM, M.P., 2012

– Rules 10(1), (2) & (3) – See – Vishesh Nyayalaya Adhiniyam, M.P., 2011, Section 13: *Mahesh Vs. State of M.P., I.L.R. (2019) M.P. 629*

– Rule 10(2) & (3) – Mandatory or Directory – Statutory Interpretation – Held – In the Rule, if the consequence of non-compliance is provided, then the rule is mandatory and where the consequence of non-compliance is not provided, then the rule is directory – In present case, Rule 10(2) & (3) provides consequence of not filing the statement of defence in prescribed period, thus the provisions is mandatory: *Mahesh Vs. State of M.P., I.L.R. (2019) M.P. 629*

VISHWAVIDYALAYA ADHINIYAM, M.P. (22 OF 1973)

– Sections 4(xxiv), 34 & 35(j), College Code, Statute 28, University Grants Commission Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards of

Higher Education, Regulation 2010 – Teachers/Petitioner working in aided private institutions, on the ground of amended Statute 28 of College Code seeking entitlement for benefit of having their age of superannuation at 65 years as is applicable for government teachers – Held – Statute 28 of College Code has not been amended, language of the resolution dated 07.01.2014 is not to enhance the age of superannuation, but it was only a recommendation which has not been accepted either by Executive Council of respective Universities or by the State Government – Resolution dated 07.01.2014 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the member of teaching faculty of private aided institutions – Further held – UGC Regulations, 2010 are not applicable to the State Government per se but could be adopted by the State Government – Further held – Any financial liability on State Government cannot be created impliedly, but has to be specifically accepted by State Government – Hence, teachers working in the aided private institutions are not entitled to claim that their age of superannuation shall be 65 years as is applicable in case of Government teachers – Questions of Law referred to Larger Bench answered accordingly: *S.C. Jain (Dr.) Vs. State of M.P., I.L.R. (2017) M.P. 1299 (FB)*

– Section 13(2) & 13(4) – Committee for appointment of Kulpati – Petition for quashment of notification dated 04.12.2015 by which committee constituted for recommending panel of 3 persons for appointment of Kulpati – Touchstone of principle of Natural Justice & bias – Respondents No. 3 & 4, who were aspirants for the post of Kulpati, participated and expressed their views through vote in the meeting held for election of one of the Members of Committee, who in turn has to select the candidate for the post of Kulpati – Active participation of respondents in the meeting contaminated whole process – Presence of personal bias vitiates entire proceedings renders it null and void – Actual proof of bias not possible but reasons to believe that respondent Nos. 3 & 4 were in position to influence the result of Committee – Election of member cancelled, executive committee directed to start fresh election process – Petition allowed: *Ajay Vs. Kuladhipati, Devi Ahilya Vishwavidyalaya, Indore, I.L.R. (2016) M.P. 2721 (DB)*

– Section 37 – Awadesh Pratap Singh Vishwavidyalya Ordinance 16(1) – Forged Mark Sheet – Petitioner on the basis of forged marksheets of graduation appeared in Post Graduate Examinations and thereafter got job – University called upon the petitioner to submit original marksheet but he did not furnish on a plea that entire record have washed away in flood – Information was called from University Examination Cell and it was found that petitioner had not passed graduate examination – University rightly cancelled the marksheets: *Shacheendra Kumar Chaturvedi Vs. Awadesh Pratap Singh Vishwavidhyalya, I.L.R. (2016) M.P. 1925*

– Section 37 – Rule 26(A)(3), 26(B)(3) of Ordinance – Petitioner, MBBS student seeking re-examination of practical answer sheet – Held – In Viva, long case, short case and spot case, no answer sheets are provided thus revaluation and issuance of mandamus is not permissible – As per proviso to Rule 26(A)(3), no revaluation is allowed in case of scripts of practical, field work, sessional work, test and thesis – As per proviso to Rule 26(B)(3), no inspection of answer book in case of script of practical, field works, sessional work, test and thesis and no photocopy of answer books, foil counter foil/marks will be provided to the examinee – Petition dismissed: *Yashpal Ray Vs. Dean M.G.M. Medical College, I.L.R. (2016) M.P. 1044 (DB)*

W

WAKF ACT (43 OF 1995)

– Section 54 & 85 and Civil Procedure Code (5 of 1908), Section 11 – Wakf Property – Jurisdiction of Civil Court – Res-Judicata – Civil Court held the applicant to be a tenant whereas subsequently, in a proceedings before Wakf Tribunal, he was held to be an encroacher – Held – In order to attract bar u/S 11 C.P.C., former judgment must have been passed by competent Court – In instant case, judgment of civil Court has been passed ignoring bar u/S 85 of the Act of 1995 is nullity and will not operate as res-judicata in the proceedings before Wakf Tribunal – Even on merits, applicant failed to prove that he was a tenant – Revision dismissed: *Rambharose Rathor Vs. M.P. Waqf Board, I.L.R. (2017) M.P. *160*

– Sections 61(3), 68(2) & (3) – See – Criminal Procedure Code, 1973, Section 482: *Mohd. Arif Vs. Mohd. Arif Raeen, I.L.R. (2017) M.P. 189*

WAREHOUSING CORPORATION STAFF REGULATIONS, M.P. (58 OF 1962)

– Regulation 13 and Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhyadesh, M.P., 2018, Ordinance No. 4/2018 – Age of Superannuation – Held – As per amended Regulation 13, in respect of age of superannuation/ retirement, policies of State Government as in force from time to time shall be applicable to Corporation's employees by way of reference – State Government promulgated ordinance to increase the age of retirement from 60 years to 62 years – By virtue of application of Adhyadesh of 2018, retirement age of Class I, II & III employees of corporation would be 62 years – Impugned orders retiring petitioner at age of 60 years are quashed – Petition allowed: *Amiruddin Akolawala Vs. State of M.P., I.L.R. (2019) M.P. 857*

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT (6 OF 1974)

– Sections 43, 44 & 49 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Inherent powers – Quashing the complaint – Liability of the officers of the Company – Petitioner is the Managing Director of the Company – He is not responsible for the day to day control of the affairs of the factory of the Company from where the industrial effluent is alleged to have been discharged – Section 47 (1) of the Act mentions that a person shall not be liable to be proceeded against if he is able to establish that the offence was committed without his knowledge or that the same was committed despite the said person exercising due diligence to prevent the offence – Petition allowed: *Manu Anand, Managing Director Vs. M.P. Pollution Control Board, I.L.R. (2016) M.P. 3180*

WEIGHT AND MEASURES (CLASS III) (NON-MINISTERIAL) SERVICE RECRUITMENT RULES, M.P., 1990

– Rule 6 & 8 – See – Standards of Weights and Measures (Enforcement) Act, 1985, Section 3(f) & 5: *P.K. Tembhare Vs. State of M.P., I.L.R. (2018) M.P. *92*

WHISTLE BLOWERS PROTECTION ACT, 2011 (17 OF 2014)

– Section 11 – Petition for declaring as Whistle Blower and for protection under the Act – Petitioner is District Labour Officer – Petitioner submitted complaint regarding financial irregularities in the matter of disbursement of scholarship by staff of his own department under the Scheme "Shiksha Protsahan Rashi Yojna & Medhavi Chhatra Chhatraon Ko Nagad Puraskar Yojna" – FIR was registered – Enquiry under the Scheme was conducted by the Collector – Petitioner himself was found involved in the said fraud relating to disbursement of scholarship under the Scheme – FIR against petitioner was registered – Petitioner was declared absconding – Reward of Rs. 5000/- was notified as per proclamation– Present petition filed after the proclamation – Anticipatory Bail Application – Dismissed – Held – In the said sequel of facts & in the context to the object & spirit of the Act of 2011, Petitioner cannot be treated to be Whistle Blower giving protection & safeguards u/S 11 of the Act – Petitioner not acted in good faith – Petition is devoid of merit and dismissed with cost: *Kirti Kumar Gupta Vs. State of M.P., I.L.R. (2016) M.P. 3066*

– Section 11 – Safeguards against victimization – Scope & Ambit: *Kirti Kumar Gupta Vs. State of M.P., I.L.R. (2016) M.P. 3066*

WILD LIFE (PROTECTION) ACT (53 OF 1972)

– Sections 9, 39, 44, 49-B, 51 & 52 – Consideration of Bail – Grounds – Skin of leopard was seized from the applicant/accused – Held – Prima facie, applicant/accused is involved in a very grave and serious offence as the wild animal leopard comes under Schedule – I, Part I of the Wild Life (Protection) Act, 1972 – Further held – Population of tigers, leopards and other wild animals is rapidly declining in our country and skins, bones and other organs of tiger and leopard are in great demand in international market – At this stage of investigation, bail cannot be granted to applicant/accused – Application dismissed: *Ramesh Vs. State of M.P., I.L.R. (2018) M.P. 201*

– Sections 35(8), 2(16), 9, 39, 44, 49, 50(c) & 51 – See – Criminal Procedure Code, 1973, Section 439(2): *State of M.P. Vs. Jaitmang (@ Pasang) Limi, I.L.R. (2017) M.P. *14*

WILL

– Doctrine of Election & Doctrine of Estoppel – Held – Any party which takes advantage of any instrument must accept all that is mentioned in it – Party, if knowingly accepts benefits of a contract or conveyance or an order, it is estopped to deny validity or binding effect on him of such contract, conveyance or order – A person who takes benefit of a portion of the "Will" cannot challenge the remaining portion of the "Will" – Party cannot be permitted to approbate and reprobate at the same time: *Bhagwat Sharan (Dead Thr. Lrs.) Vs. Purushottam, I.L.R. (2020) M.P. 1795 (SC)*

WITNESSES PROTECTION SCHEME, 2018

– See – Criminal Procedure Code, 1973, Section 439(2): *In the matter of State of M.P. Vs. Deshraj Singh Jadon, I.L.R. (2019) M.P. *53*

WORDS & PHRASES

– "Administered under any enactment for time being in force" – Held – In Section 36(1)(b) of the Public Trust Act, the legislature has consciously used the word 'administered' and has not used the word 'registered' – Word 'administration' means management of the affairs of an institution: *Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/Shitla Mata Kalyan Samiti Vs. State of M.P., I.L.R. (2017) M.P. 1078*

– "Aggravating Circumstances" and "Mitigating Circumstances" – Aggravating circumstances relates to the crime and mitigating circumstances relates to the criminal – Explained: *In Reference Vs. Sachin Kumar Singhraha, I.L.R. (2017) M.P. 690 (DB)*

– "Alibi" – Held – The word "Alibi" is a latin word which means "elsewhere" – It is used when accused takes the plea that when occurrence took place, he was elsewhere: *Patiram Kaithele Vs. State of M.P., I.L.R. (2019) M.P. 1899*

– "Approbate and reprobate" – Party placed statements on record, as part of evidence – Later urged that the same is inadmissible – Not permissible: *Bablu @ Netram @ Netraj Vs. Smt. Abhilasha, I.L.R. (2016) M.P. 1138*

– "Arbitrator" & "Adjudicator" – Held – In place of 'arbitrator' the parties have used the word 'adjudicator' to convey the same meaning – Clause makes it clear the intention of the parties, to resolve the dispute through adjudicatory process in case of failure of consultation process – Hence the said clause is not a clause relating to one sided decision by the departmental authority or the expert but it is an arbitration clause: *M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. Vs. Serco BPO Pvt. Ltd., I.L.R. (2018) M.P. 166*

– "Audi alteram partem" – Explained and discussed: *Anil Dhakad Vs. State of M.P., I.L.R. (2018) M.P. 1835*

– "Circumstantial Evidence" & "Extra-Judicial Confession" – Scope and Ambit: *In Reference Vs. Phool Chand Rathore, I.L.R. (2017) M.P. *20 (DB)*

– "Cognizance" – The word cognizance has a wider connotation and is not merely confined to the stage of taking cognizance of the offence – Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed: *Akhilesh Kumar Jha Vs. State of M.P., I.L.R. (2016) M.P. 1589*

– "Constructive Fraud", "Actual Fraud" & "Actionable Fraud – Discussed and explained: *Sukh Sagar Medical College & Hospital Vs. State of M.P., I.L.R. (2020) M.P. 1969 (SC)*

– "Culpable Rashness" & "Culpable Negligence" – Discussed and explained: *Ravi Singh Vs. State of M.P., I.L.R. (2019) M.P. 2378*

– "Voluntary surrender", "Peaceful dispossession", "Forceful dispossession", Prejudice" – Definition: *Gayatri Devi (Smt.) Vs. State of M.P., I.L.R. (2016) M.P. 3310*

– "Dies Non" – Held – Words "dies non" is a short for dies non juridicus which means either a day on which no legal business is done or the day that does not count: *Shailendra Vs. State of M.P., I.L.R. (2019) M.P. 1663*

– "Extra-Marital Affair" – Discussed and explained: *Anil Patel Vs. State of M.P., I.L.R. (2020) M.P. 482*

– "Force Majeure" Event/"Act of God"/"Natural Calamity" – Held – Clause 48 deals with effect of closure of liquor vends due to liquor prohibition policy or natural calamity – Whether it is called "Act of God" or "natural Calamity" as provided in Clause 48, both are deemed to be a "force majeure" event – Office memorandum of Central Government does indicate that Covid-19 to be a "force majeure" event – Covid-19 pandemic falls within meaning and term of "natural calamity" and being a "force majeure" event expressly covered by Clause 48 of the policy: *Maa Vaishno Enterprises Vs. State of M.P., I.L.R. (2020) M.P. 1577 (DB)*

– "Going Concern" – Discussed and explained: *State of M.P. Vs. SRF Ltd., I.L.R. (2019) M.P. 2218 (DB)*

– "Gratuitous Licensee" – Supreme Court has concluded that a person having no independent right qua the suit premises though staying with original licensee in suit premises gratuitously or in capacity as caretaker or a servant would not acquire any right or interest in the property and even long possession in property in that capacity would be of no consequence: *Hemant Kumar Hala (Dr.) @ Sem Vs. Senodical Board of Health Services, I.L.R. (2018) M.P. 2451*

– "Irreparable Loss" – Held – Petitioners/ purchasers acquired ownership and possession of lands by way of registered sale deeds under a statute – Their dispossession comes within purview of "Irreparable loss": *Vedvrat Sharma Vs. State of M.P., I.L.R. (2019) M.P. 1639*

– "Landless Person" – Held – A 'landless person' is a person who does not own either in his own name or in the name of any member of his family any house or land in an urban area where he is actually residing – Patta can be given to those persons who are 'urban poor', who do not have any means to purchase land and construct houses in the urban locality: *Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P., I.L.R. (2017) M.P. 1043 (DB)*

– "Litigation" & "PIL" – Discussed & explained: *Gaurav Pandey Vs. Union of India, I.L.R. (2020) M.P. 895 (DB)*

– "Mala fide" – The allegations regarding mala fide cannot be vaguely made – It must be specific and clear and the person against whom it is alleged must be made party: *Rajendra K. Gupta Vs. Shri Shivrajsingh Chouhan, Chief Minister of M.P., I.L.R. (2016) M.P. 3276 (DB)*

– "Malice" – "Legal Malice" or "Malice in Law" and "Malice in Fact" & "Malice in Law" – Meaning – Discussed: *M.P. Power Transmission Co. Ltd. Vs. Yogendra Singh Chahar, I.L.R. (2018) M.P. 2099 (DB)*

– "Natural Justice" – Discussed & explained: *Technosys Security Systems Pvt. Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 866 (DB)*

– "Negligence", "malfeasance", "misfeasance" and "non-feasance" – Explained: *Bank of Maharashtra Vs. M/s. ICO Jax India Deedwana Oli Lashkar Gwalior, I.L.R. (2017) M.P. 645*

– "Novation of contract" – Scope & Ambit: *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2017) M.P. 515 (SC)*

– "Ordinarily" – Held – Expression 'ordinarily' may mean 'normally', 'usually' or "in ordinary course" – It may not mean 'solely', 'primarily' or 'universally' rather it means "not invariably" – In common parlance 'ordinarily' means in a large majority of cases, there may be an option – In general, word 'ordinary' if considered without any reflection of other statutory provision due to absence of such, its meaning would be a directory: *Abbas Ali Vs. State of M.P., I.L.R. (2019) M.P. 1944 (DB)*

– "Precedent" – Held – Precedence is what is actually decided by Supreme Court and not what is logically flowing from it – A single fact may change the precedential value of judgment – Further, there is no precedence on facts, only legal principles laid down are binding: *Dheerendra Singh @ Dheeru Vs. State of M.P., I.L.R. (2019) M.P. 1875 (DB)*

– "Proper Party" and "Necessary Party" – Explained – Necessary party is one in whose absence an effective decree cannot be passed by Court and proper party is one whose presence enables the Court to completely, effectively and properly adjudicate the issues involved in case, though he may not be a person in whose favour or against whom a decree is to be made: *Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad, I.L.R. (2017) M.P. 1154*

– "Proviso", "any order" and "before passing any order" explained: *Ravi Kumar Bajpai Vs. Smt. Renu Awasthi Bajpai, I.L.R. (2016) M.P. 302*

– "Review" & "Recall" – Held – The word "review" is related to a judgment or order passed on merits – An administrative order such as granting adjournment is not an order on merits and recalling such order would not amount to reviewing the order: *Kailash Vs. State of M.P. Through SPE, Lokayukt, Ujjain, I.L.R. (2019) M.P. 911*

– "Speaking Order" – Discussed & explained: *Technosys Security Systems Pvt. Ltd. (M/s) Vs. State of M.P., I.L.R. (2020) M.P. 866 (DB)*

– "Summary Inquiry" and "Decision" – Defined: *Chandra Prakash Sharma Vs. The State Election Commission, M.P., I.L.R. (2016) M.P. *4*

– "Telegraph line", 'Appliance' or 'Apparatus' – Definition – Wide connotation given: *Vimla Sondhia (Smt.) Vs. Door Sanchar Zila Prabandhak, I.L.R. (2016) M.P. 210*

– "Utility", Public "Utility" – Defined: *Gangaram Loniya Chohan Vs. State of M.P., I.L.R. (2016) M.P. 1359 (DB)*

WORK CHARGED AND CONTINGENCY PAID EMPLOYEES PENSION RULES, M.P., 1979

– See – Civil Services (Pension) Rules, M.P. 1976: *Kanhaiyalal Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2019) M.P. 2476*

WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT (45 OF 1955)

– Sections 13, 17(1) & (2) and Recommendations of Majithia Wage Board, Clause 20(j) – Recovery of Wages from Employer – Held – On recommendations of Wage Board, Central Government notification issued on 11.11.2011 and as per clause 20(j) of recommendations, three weeks period of submission of option by employees expired on 02.12.2011 – Employee(R-3) was not even in employment on that date as he was initially appointed on 01.11.2012 and hence clause 20(j) has no application in case of R-3 – As per notified recommendations, the revised wages and emoluments are higher than what is paid to R-3 which is in violation of Section 13 of the Act of 1955 – He is entitled to receive revised wages and emoluments – Recovery Certificate rightly issued – Petition dismissed: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 122*

– Section 17(1) & (2) and Industrial Disputes Act (14 of 1947), Section 10 – Reference to Labour Court – Jurisdiction – State Government made reference for adjudication of dispute to Labour Court – Held – Section 17 is a Code in itself, if upon considering the claim of employee and response from employer, the question arises regarding the 'amount due' or 'employer-employee relationship', matter needs to be referred by State Government for adjudication before Labour Court – No fault with impugned orders – Petitions and appeals dismissed: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 1217 (DB)*

– Section 17(2) – Reference – Enquiry – Held – While making reference u/S 17(2) of the Act of 1955, Government should have made enquiry about relationship of employer and employee between petitioner and R-3 – In absence of any enquiry,

reference is bad in law: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 565*

– Section 17(2) – Reference – Validity – Jurisdiction of High Court – Held – Apex Court has concluded that High Court can go into the question of validity of reference: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 565*

– Section 17(2) and Industrial Disputes Act (14 of 1947), Section 33(C)(2) – Held – On account of different language employees and mechanism provided in Section 17(2) of Act of 1955, it is not pari materia to Section 33(C)(2) of the Act of 1947: *Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2019) M.P. 1217 (DB)*

WORKMEN'S COMPENSATION ACT (8 OF 1923)

– Section 2(1)(n) – Definition of "Workmen" – Appellant filed a claim case for compensation on account of accidental death of his son while on duty during the course of employment under the respondent – Claim case was dismissed – Challenge to – Held – It is clear from the facts that death of employee has occurred during the course of employment but Section 2(1)(n) shows that the Workmen's Compensation Act excludes the employees doing clerical or supervisory work – In the present case, deceased was employed as a clerk and was thus not a "Workman" within the ambit of the provisions of the Act – Impugned order is just and proper – Appeal dismissed: *Gajendra Singh Vs. S.G. Motors, I.L.R. (2017) M.P. *91*

– Section 4-A – Interest – Date of payment of interest – Held – As per Section 4-A(3) of the Workmen's Compensation Act 1923 and also as per the dictum of Apex Court in Pratap Narain Singh Deo's Case (AIR 1976 SC 222) and Siby George case (2012(134) FLR 1064), the interest is payable from the date of accident – Appellant entitled to interest @ 12% p.a. from the date of accident till the payment of compensation: *Chhagan Sikarwar (Smt.) Vs. Lokendra Singh Dhakare, I.L.R. (2016) M.P. 2303*

– Section 4-A – Interest – Denial thereof – Whether Commissioner for Workmen's Compensation has any discretion in disallowing the claim of interest as per Section 4(A) of Workmen's Compensation Act, 1923 – Held – No, as per Section 4-A(3) of Workmen's Compensation Act, 1923 whenever an employer is in default in payment of compensation, for whatever reasons, the Commissioner shall direct for payment of interest @ 12% p.a. and the Commissioner has no discretion in the matter and levy of interest is mandatory: *Chhagan Sikarwar (Smt.) Vs. Lokendra Singh Dhakare, I.L.R. (2016) M.P. 2303*

– Section 30 – Compensation – Quantum – Interest on Compensation – Respondent while carrying out repairing and maintenance of electric line got electric shock from High Tension Line and died – In claim case, Commissioner under the Act of 1923 awarded a compensation of Rs. 3,78,575 alongwith interest @ 12% from the date of accident – Challenge to – Held – Appellant contended that respondent was not their employee but was the employee of the contractor who was contracted for maintenance work – In written statements, appellant stated the place of work as Transport Nagar whereas Contractor stated the place of work as Kishanbagh – Appellant and Contractor could not establish their respective contention – Further, appellant miserably failed to establish the shift duty allocated to workers whose names were found in attendance sheet – Oral and documentary evidence shows that findings recorded by Commissioner cannot be faulted with – Further held – Supreme Court held that interest on compensation should be paid from date of accident – In the present case, award of interest from date of accident, also cannot be faulted with – Appeal dismissed: *Executive Engineer (City Division North) M.P.M.K.V.V.C.L. Roshnighar, Gwalior Vs. Kishorilal, I.L.R. (2017) M.P. *90*

– Section 30(1) – See – Payment of Wages Act, 1936, Sections 15(2) & 17(1A): *Saabir & Brothers Vs. Rajesh Sen, I.L.R. (2016) M.P. 786*

WORKS CONTRACT

– Printing of Bhu-Adhikar & Rin Pustikas – Printing order placed on 16.01.2008 with the respondents – Supply of 37, 07, 726 copies of Pustikas – Half to be supplied till 08.02.2008 – Rest to be supplied before 25.02.2008 – On 25.02.2008 modified booklet approved and printer asked to ensure supply – Letter dated 28.03.2008 fixing the time limit for supply of Booklets till 31.03.2008 – After 31.03.2008 no booklets will be accepted – Respondent challenging letter dated 28.03.2008 by way of Writ Petition – Petition allowed by High Court – State directed to accept the Rin Pustikas and to make the payment – State preferred Writ Appeal – Dismissal thereof – Held – As the order was placed on 16.01.2008 and booklets were to be supplied till 25.02.2008, and as time was essence of the contract and by letter dated 28.03.2008 it was made clear that the supply was to be made till 31.03.2008 and there after no supply will be accepted, so it means that after 31.03.2008 the work order is to be treated as cancelled – Communication dated 22.05.2008 has been recalled by letter dated 30.01.2009, so there was no rhyme or reason for the Printer to print the Booklets after 31.03.2008 – Division Bench erred in directing that the Booklets printed till 22.05.2008 be accepted as after 31.03.2008 no work order was in existence – Direction – Payment be made to the Printer, if not made, for the supply made till 31.03.2008 – Impugned order set aside – Appeal allowed: *State of M.P. Vs. M/s. Ruchi Printers, I.L.R. (2016) M.P. 3213 (SC)*

– Tender – Outsourcing the Work of House keeping and Security Services for Hospital and Dispensaries – Technical & Financial bid – Petitioner & Respondent No. 4 qualified the round of Technical bid thereafter, on evaluation of financial bid, petitioner did not qualify – Bids of Respondent No. 4 were accepted – Hence, this petition – Ground – Lowest Bidder – Some of the terms & conditions of the tender are arbitrary – Held –The rate quoted by the petitioner was vague/non-realistic and the remuneration quoted for labourers was not as per the terms & conditions of the tender and even otherwise, the scope of Judicial review in contractual matters is limited and there is no illegality in decision making process nor the decision is based on malafide grounds – Petition dismissed with cost of Rs. 2000/-: *Indoriya Security Force Vs. State of M.P., I.L.R. (2016) M.P. *26*

WORKS OF LICENSEES RULES, 2006

– Rule 3(4) – See – Electricity Act, 2003, Section 164: *Monica Nagdeo (Smt.) Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2016) M.P. 2209*

WRIT APPEAL

– Limitation – Condonation of Delay – Ground – Held – Appellant was prosecuting remedy before this Court by way of writ appeal and review petition and hence delay in filing present appeal is bonafide constituting sufficient cause – Delay condoned: *Ram Kumar Meena Vs. State of M.P., I.L.R. (2017) M.P. 2099 (DB)*

WRIT JURISDICTION

– Inquiry – Court cannot conduct a roving inquiry in respect of each and every High Rise Building in the township – There is High Rise Building Committee comprising of experts and permissions are granted in accordance with law for such construction: *Pradeep Hinduja Vs. State of M.P., I.L.R. (2019) M.P. 339 (DB)*

PERSONAL NOTES

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